



Review of Collin County's Indigent Defense Systems

February 15, 2013



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MISSION

The Texas Indigent Defense Commission provides financial and technical support to counties to develop and maintain quality, cost-effective indigent defense systems that meet the needs of local communities and the requirements of the Constitution and state law.

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Purpose of Review

The Commission is required to monitor local jurisdictions' compliance with the Fair Defense Act ("FDA").¹ The purpose of this review is to promote local compliance and accountability with the requirements of the FDA through evidence-based practices and to provide technical assistance to improve processes where needed. In addition, this review process is designed to assist the local jurisdiction in developing procedures to monitor its own compliance with its indigent defense plan and the FDA.

Core Requirements of the Fair Defense Act

1. Conduct prompt and accurate magistration proceedings:
 - Inform and explain right to counsel to accused;
 - Provide reasonable assistance to accused in completing necessary forms to request counsel;
 - Maintain magistrate processing records.
2. Determine indigence according to standards directed by the indigent defense plan.
3. Establish minimum attorney qualifications.
4. Appoint counsel promptly.
5. Institute a fair, neutral, and non-discriminatory attorney selection process.
6. Promulgate a standard attorney fee schedule and payment process.

Methodology

Throughout this report all references to Commission staff use the term "monitor". The policy monitoring site review for Collin County was conducted by Joel Lieurance with visits to the County between September 4 and September 7, 2012 and between September 17 and September 19, 2012. The monitor also coordinated with Collin County personnel to electronically send relevant data. The monitor met with the following persons: the district and statutory county judges; the auditor's office; the pre-trial services department; and the grants' manager. The monitor observed magistrate's warnings and a juvenile detention hearing. The monitor examined the following records:

- Local indigent defense plans;
- Misdemeanor and felony case files including magistrate warning forms and requests for counsel, orders appointing counsel or denying indigence, waivers of counsel, and case dispositions;
- Juvenile case files showing juvenile detention data, petition filing dates, petition service dates, and dates of appointment of counsel or denial of indigence;
- Attorney appointment lists; and
- Payment data from the auditor's office showing the number of cases paid to each attorney in order to determine the distribution of appointments.

¹ Tex. Gov't Code § 79.037(b).

Summary of Commendations / Recommendations

Based upon the Commission's program assessment, Collin County has many effective processes for ensuring that the County meets Texas' indigent defense requirements. These processes include a fair appointment system, accurate record keeping systems, and indigent defense plans having all their required elements. The County was challenged in meeting some of the requirements listed in Article 15.17 of the Code of Criminal Procedure and in making timely appointments of counsel in felony cases as well as in instances where a juvenile who is out of custody is served with a petition.

The commendations and recommendations from the report are listed below. The County does not need to respond to the report's commendations but must respond to how the report's recommendations will be addressed.

Core Requirement 1. Conduct prompt and accurate magistration proceedings.

Recommendation 1: Magistrates in Collin County must provide the warnings listed in Article 15.17(a) either in person or through an electronic broadcast system.

Recommendation 2: Collin County must make a record of the magistrate asking whether the arrestee wants to request appointed counsel.

Commendation 1: The timeliness of the monitor's sample of magistrate warnings indicates that Collin County has procedures for ensuring that magistrate warnings are given within 48 hours of arrest.

Core Requirement 2. Determine indigence according to standards directed by the indigent defense plan.

Commendation 2: The district courts' and county courts' indigent defense plans meet statutory provisions regarding standards of indigence for adults.

Commendation 3: The juvenile board's plan meets statutory provisions regarding standards of indigence for juveniles.

Core Requirement 3. Establish minimum attorney qualifications.

Commendation 4: Collin County meets and exceeds the minimum attorney criminal law CLE requirements for adult cases as set by the Commission.

Commendation 5: Collin County maintains appropriate records of criminal attorney appointment lists and annual criminal law CLE hours needed to stay on these lists.

Commendation 6: Collin County maintains appropriate records of attorney appointment lists for juvenile matters and annual juvenile law CLE hours needed to stay on these lists.

Core Requirement 4. Appoint counsel promptly.

Recommendation 3: Collin County must implement processes that ensure timely appointment of counsel in felony cases.

Commendation 7: Collin County's procedures for appointment of counsel in misdemeanor cases meet the Commission's threshold for presuming that a jurisdiction's processes are timely.

Commendation 8: Collin County's processes ensure appointment of counsel at juvenile detention hearings. The monitor's sample of juvenile cases showed that appointment of counsel for juveniles with detention hearings was 100% timely.

Recommendation 4: Collin County must implement processes that ensure timely appointment of counsel when there is a petition served on a juvenile who is out of custody.

Core Requirement 5. Institute a fair, neutral, and non-discriminatory attorney selection process.

Commendation 9: Collin County’s distribution of felony appointments falls well within the Commission’s level for presuming that a jurisdiction’s appointment processes are fair, neutral, and non-discriminatory.

Commendation 10: Collin County’s distribution of misdemeanor appointments falls well within the Commission’s level for presuming that a jurisdiction’s appointment processes are fair, neutral, and non-discriminatory.

Commendation 11: Collin County’s distribution of juvenile appointments falls within the Commission’s level for presuming that a jurisdiction’s appointment processes are fair, neutral, and non-discriminatory.

Core Requirement 6. Promulgate standard attorney fee schedule and payment process.

Commendation 12: The auditor’s office appeared to have procedures for making proper payments and for accurately tracking indigent defense expenses and cases.

Statutory Data Reporting

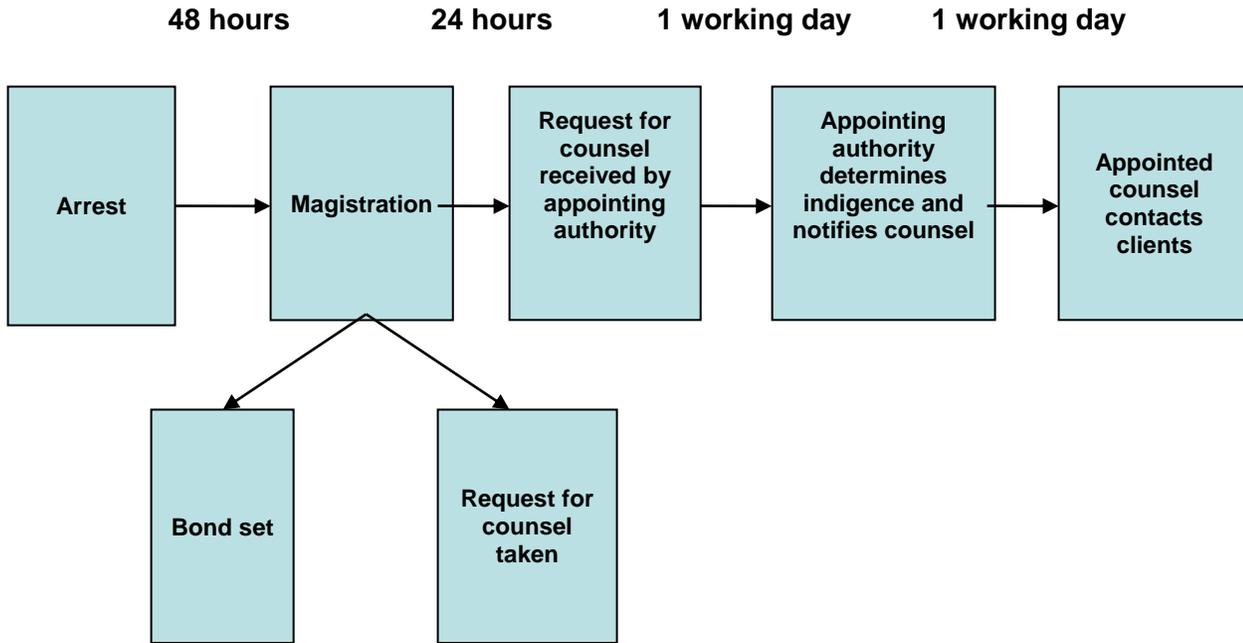
Commendation 13: As mandated by Section 79.036 of the Texas Government Code, the Collin County Auditor’s Office completed the annual indigent defense expenditure report in a timely manner and maintained relevant supporting data.

County Indigent Defense Plans

Commendation 14: As mandated by Section 79.036 of the Texas Government Code, Collin County made a timely submission of its indigent defense plans that describe the procedures for appointment of counsel in criminal and juvenile cases. All required elements of the plans were included in the plans.

Overview of Collin County’s Indigent Defense System

Figure 1: Fair Defense Act Timeline Model for Counties with Populations Over 250,000



Several different law enforcement agencies have authority to arrest individuals in Collin County. Most municipal police departments send their arrestees directly to the Collin County Jail. However, two municipalities (Frisco and Plano) have local jails where municipal judges conduct magistrate warnings and take requests for counsel. From these two jails, requests for counsel are transferred to the Collin County Jail along with inmates and the inmates’ other paperwork. When an individual initially requests counsel at the municipality, he/she interviews with Pre-trial Services (a Collin County department) and completes an affidavit of indigence at the next weekday magistration in Collin County.

Persons who are not arrested by the Frisco or Plano Police Departments receive their magistrate warnings at the Collin County Jail. Justices-of-the-peace conduct Article 15.17 hearings every morning. At this hearing, a magistrate determines whether there is probable cause and sets bond. The magistrate, however, does not provide the accused an opportunity to request counsel as is required by Article 15.17. The ability to request counsel is designated for a meeting with Pre-trial Services on weekday mornings. Pre-trial Services provides affidavits of indigence to arrestees wishing to request counsel. If the arrestee earns less than 125% of the federal poverty guidelines and has assets worth less than \$2500, the arrestee will be considered indigent and will receive appointed counsel.

Collin County uses a rotational system for determining which attorney gets appointed to a case. Cases are distributed evenly between attorneys. Once appointed, the attorney continues with the case through disposition and then submits a fee voucher for payment.

A summary of indigent defense statistics, which were submitted by the County to the Commission and the Office of Court Administration (OCA), follows on the next page. The tables show appointment rates for the court systems as well as respective expenditure data.

Table 1: Indigent Defense Statistics for Collin County

| Collin County | 2001 Baseline | 2008 | 2009 | 2010 | 2011 | Texas 2011 |
|---|--------------------------|--------------|--------------|--------------|--------------|-------------------|
| Population Estimate | 538,574 | 749,590 | 774,634 | 782,341 | 782,341 | 25,145,561 |
| Felony Cases Added | | 4,365 | 4,114 | 4,044 | 4,104 | 269,537 |
| Felony Cases Paid | | 2,443 | 1,598 | 1,725 | 1,957 | 185,969 |
| Felony Appointment Rate | | 55.97% | 38.84% | 42.66% | 47.69% | 69.00% |
| Felony Attorney Fees | | \$2,145,375 | \$1,940,589 | \$1,782,134 | \$2,152,262 | \$97,000,637 |
| Total Felony Expenditures | | \$2,485,399 | \$2,251,061 | \$2,036,048 | \$2,420,875 | \$109,718,251 |
| Misdemeanor Cases Added | | 8,685 | 10,960 | 10,851 | 10,580 | 549,929 |
| Misdemeanor Cases Paid | | 2,637 | 1,939 | 2,173 | 2,499 | 223,586 |
| Misdemeanor Appointment Rate | | 30.36% | 17.69% | 20.03% | 23.62% | 40.66% |
| Misdemeanor Attorney Fees | | \$1,036,304 | \$776,176 | \$927,607 | \$948,918 | \$34,607,085 |
| Total Misdemeanor Expenditures | | \$1,049,130 | \$784,849 | \$934,847 | \$960,728 | \$35,303,063 |
| Juvenile Cases Added | | 1,349 | 1,313 | 1,180 | 1,009 | 30,441 |
| Juvenile Cases Paid | | 1,081 | 881 | 813 | 750 | 53,739 |
| Juvenile Attorney Fees | | \$454,489.95 | \$294,955.00 | \$372,533.07 | \$345,650.50 | \$10,398,182 |
| Total Juvenile Expenditures | | \$463,568.07 | \$297,245.00 | \$395,931.24 | \$351,915.11 | \$11,100,633 |
| Total Attorney Fees | \$2,084,246 | \$3,900,047 | \$3,124,677 | \$3,209,738 | \$3,612,847 | \$148,268,608 |
| Total ID Expenditures | \$2,548,141 | \$4,453,115 | \$3,601,843 | \$3,623,434 | \$3,982,755 | \$198,364,999 |
| Increase In Total Expenditures over Baseline | | 74.76% | 41.35% | 42.20% | 56.30% | 123.56% |
| Total ID Expenditures per Population | \$4.73 | \$5.94 | \$4.65 | \$4.63 | \$5.09 | \$7.89 |
| Formula + Equalization Grant Disbursement | | \$317,820 | \$566,832 | \$338,664 | \$410,804 | \$24,874,200 |
| Recoupment of Fees from Defendants | | \$239,067 | \$440,502 | \$504,929 | \$486,688 | \$11,793,630 |

Program Assessment

In the assessment that follows, the core requirements of the FDA are listed with a description of statutory provisions and are compared to the County's performance with regard to each requirement. If the monitor found that the County met the respective requirement, a box to the left of the provision is checked. The local processes are then described, and commendations and recommendations are made regarding these processes. The local indigent defense plans are listed in Appendix A (district courts' plan), Appendix B (statutory county courts' plan), and Appendix C (juvenile court's plan).

Core Requirement 1. Conduct prompt and accurate magistration proceedings.

Local Practices Compared to Adult Statutory Provisions

- The accused must be brought before a magistrate within 48 hours of arrest.²
 - A person arrested for a misdemeanor without a warrant must be released on bond in an amount no more than \$5,000 not later than 24 hours after arrest if a magistrate has not determined probable cause by that time.³
- The magistrate must inform and explain the right to counsel and the right to appointed counsel to the accused.⁴
- The magistrate must ensure that reasonable assistance in completing forms necessary to request counsel is provided to the accused.⁵
- A record must be made of the following:
 - the magistrate informing the accused of the accused's right to request appointment of counsel;
 - the magistrate asking whether accused wants to request appointment of counsel;
 - and whether the person requested court appointed counsel.⁶
- If authorized to appoint counsel, the magistrate must do so within one working day after receipt of request for counsel in counties with a population of 250,000 or more and within three working days in counties under 250,000.⁷
- If not authorized to appoint counsel, the magistrate must transmit or cause to be transmitted to the appointing authority an accused's request for counsel within 24 hours of the request being made.⁸

² Tex. Code Crim. Proc. art. 14.06(a).

³ Tex. Code Crim. Proc. art. 17.033.

⁴ Tex. Code Crim. Proc. art. 15.17(a). This box is not checked because Pre-trial Services performs this function, but the magistrate does not perform the function.

⁵ *Id.*

⁶ Tex. Code Crim. Proc. art. 15.17(e). This box is not checked because the record that is made is of Pre-trial Services asking the arrestee whether he/she wants to request counsel and not of the magistrate performing the function.

⁷ Tex. Code Crim. Proc. art. 15.17(a). This box is not checked, because the magistrate is not the appointing authority.

⁸ *Id.*

Jurisdiction's Process

Several different law enforcement agencies have authority to arrest individuals in Collin County. Most municipal police departments send their arrestees directly to the Collin County Jail. However, two municipalities (Frisco and Plano) have local jails where municipal judges conduct magistrate warnings and take requests for counsel. From these two jails, requests for counsel are transferred to the Collin County Jail along with inmates and the inmates' other paperwork. When these individuals request counsel, they interview with Pre-trial Services at the next weekday magistration hearing at the Collin County Jail.

Persons who are not arrested by the Frisco or Plano Police Departments receive their magistrate warnings at the Collin County Jail. Justices-of-the-peace conduct Article 15.17 hearings every morning. At this hearing, a magistrate determines whether there is probable cause and sets bond. The magistrate, however, does not provide the accused an opportunity to request counsel as is required by Article 15.17. The ability to request counsel is designated for a meeting with Pre-trial Services on weekday mornings. The weekday meeting with Pre-trial Services consists of persons who need to receive magistrate warnings as well as inmates who have already received magistrate warnings but who have not yet requested counsel. If an inmate has difficulty completing the affidavit, staff is available to assist the arrestee. Pre-trial Services collects all completed affidavits from arrestees before the arrestees leave the meeting area in the jail. In this way, there should be no outstanding requests for counsel with incomplete affidavits of indigence.

The monitor observed magistrate's warnings on Monday September 17, 2012. The monitor observed arrestees receiving, completing, and turning in affidavits of indigence to Pre-trial Services staff. After most arrestees had completed their affidavits, a recorded video was shown to the arrestees. The video showed a justice-of-the-peace giving the warnings required by Article 15.17, including the right to court appointed counsel. After the recorded video, arrestees who had not received a probable cause finding or had their bond set were ushered into a separate room with a video connection to the justice-of-the-peace. The justice-of-the-peace then made probable cause findings and set bond for the arrestees. The justice-of-the-peace did not ask any of the arrestees whether they wished to request appointment of counsel. That function is delegated to Pre-trial Services.

Article 15.17(a) of the Code of Criminal Procedure states:

... The arrested person may be taken before the magistrate in person or the image of the arrested person may be presented to the magistrate by means of an electronic broadcast system. The magistrate shall inform in clear language the person arrested, either in person or through the electronic broadcast system, of the accusation against him and of any affidavit filed therewith, of his right to retain counsel, of his right to remain silent, of his right to have an attorney present during any interview with peace officers or attorneys representing the state, of his right to terminate the interview at any time, and of his right to have an examining trial. The magistrate shall also inform the person arrested of the person's right to request the appointment of counsel if the person cannot afford counsel. The magistrate shall inform the person arrested of the procedures for requesting appointment of counsel. ...

Article 15.17(a) requires the magistrate to provide the warnings listed in its subsection either in person or through an electronic broadcast system. The subsection does not disallow pre-recorded warnings, but does require live warnings.

| |
|---|
| <p>Recommendation 1: Magistrates in Collin County must provide the warnings listed in Article 15.17(a) either in person or through an electronic broadcast system.</p> |
|---|

Article 15.17(e) states:

(e) In each case in which a person arrested is taken before a magistrate as required by Subsection (a), a record shall be made of:

(1) the magistrate informing the person of the person's right to request appointment of counsel;

(2) the magistrate asking the person whether the person wants to request appointment of counsel; and

(3) whether the person requested appointment of counsel.

Article 15.17(e) requires the magistrate to ask the arrestee whether the arrestee wants to request appointment of counsel and requires that a record be made of this conversation. A record is currently being made of Pre-trial Services asking whether the arrestee wants to request counsel, but no record is made of the magistrate asking the question.

Recommendation 2: Collin County must make a record of the magistrate asking whether the arrestee wants to request appointed counsel.

Timeliness of Warnings

The monitor analyzed the timeliness of magistrate warnings by examining the time from arrest to magistrate's warnings as found in felony and misdemeanor case files. Based on the data in the case files, the monitor was not able to determine the number of hours from arrest until magistration. However, the monitor was able to determine the date of arrest and the date of magistration. In this way, the monitor assumed that if magistrate's warnings occurred within two days of arrest that the warnings were timely. Similarly, if the warnings occurred more than two days after arrest, the warnings were not timely.⁹

The monitor examined 64 case files where the number of days from arrest until magistrate warnings could be determined. All but one of these warnings appeared to fall within the 48 hour time period established by Article 15.17.

Table 2: Times to Magistration

| Collin County Time to Magistration Data | Sample Size | Percent |
|--|--------------------|----------------|
| Magistrate warnings where time to magistration could be determined | 64 | |
| Magistration Occurs x days after arrest: | | |
| 0 days | 12 | |
| 1 day | 47 | |
| 2 days | 4 | |
| Timely Magistration | 63 | 98.4% |
| Greater than 2 days | 1 | |

Commendation 1: The timeliness of the monitor's sample of magistrate warnings indicates that Collin County has procedures for ensuring that magistrate warnings are given within 48 hours of arrest.

⁹ This assumption means that the 48 hour time limit is actually extended for purposes of deeming a warning late.

Statistics Showing Requests for Counsel

Justices-of-the-peace and municipal judges are required to report the number of magistrate warnings given to arrestees on a monthly basis to the Office of Court Administration (OCA). In this same report, the courts are required to report the number of requests for counsel. See Table 3 for a listing of the number of magistrate’s warnings given and the number of requests for counsel. If one examines the table, one sees that a greater number of felony arrestees requested counsel at the Collin County Justice Courts than received warnings, but that no persons requested counsel at the municipal courts. One possibility for the meaning of this data is that the number of requests for counsel reported by the Collin County Justice Courts was based upon the number of requests for counsel made through the Pre-trial Services department regardless of whether magistrate warnings were given by a justice-of-the-peace or by a municipal judge. A second observation regarding this data is that while these combined judges reported giving 1,697 felony warnings and 4,994 misdemeanor warnings that the district clerk reported 4,469 new felony cases for this period, and the county clerk reported 10,354 new misdemeanor cases.

Table 3: Requests for Counsel at Magistration during FY2012 (September 2011 – August 2012)

| Collin County Magistrate Warning Data Reported to OCA | Magistrate Warnings Given | Requests for Counsel | Request Rate |
|--|----------------------------------|-----------------------------|---------------------|
| Collin County Justice Courts | | | |
| Felony Warnings | 1,098 | 1,406 | |
| Class A and B Misdemeanor Warnings | 3,202 | 2,169 | |
| Frisco Municipal Court | | | |
| Felony Warnings | 176 | 0 | |
| Class A and B Misdemeanor Warnings | 813 | 0 | |
| Plano Municipal Court | | | |
| Felony Warnings | 423 | 0 | |
| Class A and B Misdemeanor Warnings | 979 | 0 | |
| Combined Justice and Municipal Courts | | | |
| Felony Warnings | 1,697 | 1,406 | 82.9% |
| Class A and B Misdemeanor Warnings | 4,994 | 2,169 | 43.4% |

Core Requirement 2. Determine indigence according to standards directed by the indigent defense plan.¹⁰

Local Indigent Defense Plan Compared to Adult Statutory Provisions

- ☑ Provide detailed procedures used to determine whether a defendant is indigent.¹¹
- ☑ State the financial standard(s) to determine whether a defendant is indigent.¹²
- ☑ List factors courts the court will consider when determining whether a defendant is indigent.¹³

District Court's Plan

According to the district courts' indigent defense plan (see Appendix A),

A defendant is considered indigent if:

- a. their total income does not exceed 125% of the Federal Poverty Guidelines established and revised annually by the U.S. Department of Health and Human services and published in the Federal Register; or 125 % of the Federal Poverty Level (2009). See attached exhibit.*
- b. if the defendant and defendant's spouse were not required by law to file the most recent U.S. Individual Income Tax return (either 1040 or 1040EZ) due to gross income below the filing requirements; and*
- c. if the defendant and defendant's spouse liquid assets do not exceed \$2,500; or*
- d. whose liquid assets do not exceed double the estimated cost of obtaining competent private legal representation on the offense(s) with which the defendant is charged.*

The plan lists additional factors for considering indigence while noting that neither a defendant's ability to bond nor the resources of friends and relatives are to be considered. The plan contains provisions for partial indigence and for reimbursement of attorney fees.

County Court's Plan

The county courts' indigent defense plan uses the same standard of indigence as the district courts' plan.

Commendation 2: The district courts' and county courts' indigent defense plans meet statutory provisions regarding standards of indigence for adults.

¹⁰ The policy monitor does not evaluate this core requirement by determining whether persons applying for counsel are appropriately deemed indigent or non-indigent, but rather by examining whether the jurisdiction's indigent defense plan meets relevant statutes.

¹¹ Tex. Code Crim. Proc. art. 26.04(l)-(r).

¹² Tex. Code Crim. Proc. art. 26.04(l).

¹³ Tex. Code Crim. Proc. art. 26.04(m).

Local Indigent Defense Plan Compared to Juvenile Statutory Provisions

- ☑ Detail procedures used to determine whether a child's parent(s) or other person(s) responsible for child's support are indigent.¹⁴
- ☑ State financial standard(s) to determine whether a child's parent(s) or other person(s) responsible for child's support are indigent.¹⁵
- ☑ List factors courts will consider when determining whether a child's parent(s) or other person(s) responsible for child's support are indigent.¹⁶

Juvenile Board's Plan

According to the juvenile board's indigent defense plan (see Appendix C),

The financial considerations set forth below shall be used to determine whether a juvenile is indigent and shall be applied equally to each juvenile in the county. The total income of the juvenile, child's parent(s) or other person responsible for the support of the child shall be used to determine whether the juvenile qualifies as indigent.

A juvenile who is determined by the Court to be indigent is presumed to remain indigent for the remainder of the proceedings unless a material change in financial circumstances occurs. The juvenile, juvenile's attorney or State may move for reconsideration of an indigency determination.

A juvenile is considered indigent if:

- A. their total income does not exceed 125% of the Federal Poverty Guidelines established and revised annually by the U.S. Department of Health and Human Services and published in the Federal Register; or*
- B. the juvenile and the juvenile's parent(s) were not required by law to file the most recent U.S. Individual Income Tax return, either 1040 or 1040EZ) due to gross income below the filing requirements; and*
- C. the juvenile and the juvenile's parent(s) liquid assets do not exceed \$2,500.00; or*
- D. the juvenile and the juvenile's parent(s) liquid assets do not exceed double the estimated cost of obtaining competent private legal representation on the offense(s) with which the juvenile is charged: or*
- E. at the time of requesting appointed counsel, the juvenile or the parent(s) of the juvenile have been determined to be eligible to receive Food Stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Social Security Income, public housing or Collin County Indigent Health Care.*

The plan notes that the resources of friends and relatives are not to be considered in determining indigence. The plan contains provisions for partial indigence and for reimbursement of attorney fees.

Commendation 3: The juvenile board's plan meets statutory provisions regarding standards of indigence for juveniles.

¹⁴ Tex. Fam. Code § 51.102(b)(1). Tex. Code Crim. Proc. art. 26.04(l)-(r).

¹⁵ Tex. Code Crim. Proc. art. 26.04(l).

¹⁶ Tex. Code Crim. Proc. art. 26.04(m).

Core Requirement 3. Establish minimum attorney qualifications.

Local Practices Compared to Adult Statutory Provisions

- ☑ Establish objective qualification standards for attorneys to be on an appointment list.¹⁷
 - Standards must require attorneys to complete at least six hours of continuing legal education pertaining to criminal law during each 12-month reporting period or be currently certified in criminal law by the Texas Board of Legal Specialization.¹⁸
- ☑ Attorneys must be approved by a majority of the judges who established the appointment list to be placed on the appointment list.¹⁹

Jurisdiction's Process (District Courts):

The district courts use four graduated felony appointment lists and a separate death penalty list. The graduated lists include: a first and second degree felony list; a third degree and state jail felony list; an appeals and non-capital writs list; and a motions list (covering motions to revoke probation, petitions to adjudicate, extraditions, and other miscellaneous matters). All felony attorneys must annually complete at least ten CLE hours in criminal law. Other qualifications involve: minimum numbers of jury trials for each list; an exhibition of proficiency, professionalism, and reliability; and a minimum number of years' experience in criminal law.

Jurisdiction's Process (County Courts):

The statutory county courts use a single misdemeanor appointment list. To qualify for this list, an attorney must obtain at least sixteen CLE hours in criminal law every two years or be board certified in criminal law.

The monitor observed that the adult appointment lists are maintained by the Indigent Defense Eligibility Specialist. The Indigent Defense Eligibility Specialist annually tracks criminal law CLE hours completed attorneys on appointment lists.

Commendation 4: Collin County meets and exceeds the minimum attorney criminal law CLE requirements for adult cases as set by the Commission.

Commendation 5: Collin County maintains appropriate records of criminal attorney appointment lists and annual criminal law CLE hours needed to stay on these lists.

¹⁷ Tex. Code Crim. Proc. art. 26.04(d).

¹⁸ 1 TAC §§174.1-174.4.

¹⁹ Tex. Code Crim. Proc. art. 26.04(d). The monitor did not examine actual attorney applications to be on the appointment list. The box is checked because the courts clearly had appointment lists that they followed.

Local Practices Compared to Juvenile Statutory Provisions

- ☑ Establish objective qualification standards for attorneys for three levels of conduct.²⁰
 - Conduct indicating a need for supervision or delinquent conduct (no TJJD commitment possible);
 - Delinquent conduct (TJJD commitment possible); and
 - Determinate sentence or discretionary transfer to criminal court proceedings have been initiated.
- ☑ Standards must require attorneys to complete at least six hours of continuing legal education pertaining to juvenile law during each 12-month reporting period or be currently certified in juvenile law by the Texas Board of Legal Specialization.²¹
- ☑ Attorneys must be approved by a majority of the Juvenile Board or judges on the Juvenile Board to be placed on or removed from the appointment list.²²

Jurisdiction's Process (Juvenile Courts):

The juvenile court uses three graduated appointment lists. The first level is for persons accused of either conduct indicating a need for supervision (CINS) offenses or delinquent conduct where commitment to the Texas Juvenile Justice Department (TJJD) is not an authorized disposition. The second level is for delinquent conduct where commitment to the TJJD is an authorized disposition. The third level is for determinate sentencing or certification proceedings. To qualify for any of these lists, an attorney must obtain at least six CLE hours in juvenile law annually or be board certified in juvenile law.

The monitor observed that the juvenile appointment lists are maintained by the juvenile court. The court annually tracks juvenile law CLE hours for attorneys on these appointment lists.

Commendation 6: Collin County maintains appropriate records of attorney appointment lists for juvenile matters and annual juvenile law CLE hours needed to stay on these lists.

²⁰ Tex. Fam. Code § 51.102(a),(b)(2).

²¹ 1 TAC §§174.1-174.4.

²² Tex. Fam. Code § 51.102(a), Tex. Code Crim. Proc. art. 26.04(d). The monitor did not examine actual attorney applications to be on the appointment list. The box is checked because the courts clearly had appointment lists that they followed.

Core Requirement 4. Appoint counsel promptly.

Local Practices Compared to Adult Statutory Provisions

- Incarcerated persons: After receipt of a request for counsel, counsel must be appointed within one working day in counties with a population of 250,000 or more and within three working days in counties under 250,000.²³
- Persons out of custody: Counsel must be appointed at the defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.²⁴
- All unrepresented defendants must be advised of the right to counsel and the procedures for obtaining counsel.²⁵

Jurisdiction's Process

Felony Appointments:

As a county with a population over 250,000, Collin County has 24 hours to transfer requests for counsel to the appointing authority, and then one working day to deny indigence or to appoint counsel. In Collin County, indigence is promptly ruled upon by Indigent Defense Eligibility Specialist. However, if a felony case has already been filed against the individual, counsel is not appointed by the Indigent Defense Eligibility Specialist, but rather the request is sent to the respective court who appoints counsel.

The monitor examined 138 felony cases filed in FY2011 (October 2010 – September 2011). From this sample the monitor was able to determine the timeliness of counsel appointments in 51 cases.²⁶ Of these 51 cases, 42 received timely appointments of counsel / denials of indigence (82% timely). See the following table for a summary of data showing the timeliness of counsel appointments.

Table 4: Times to Appointment in Felony Cases

| Collin Felony Appointment Sample Data | Sample Size | Number from sample | Percent |
|--|--------------------|---------------------------|----------------|
| Number of Case Files Examined | 138 | | |
| Case Files with Defendant Initially Receiving Appointed Counsel (5 later switched to retained counsel) | | 74 | 53.6% |
| Case Files with Defendant Initially Retaining Counsel (2 later switched to appointed counsel) | | 59 | 42.8% |
| Pro Se Case Files (4 still active; 1 dismissed) | | 5 | 3.6% |
| Appointment / Denial of Indigence Occurred in: | | | |
| 0 work days | 51 | 29 | 56.9% |
| 1 work day + 24 hour transfer | | 13 | 25.5% |
| Timely appointments | | 42 | 82.3% |
| Late appointments (more than 1 work day) | | 9 | 17.6% |

²³ Tex. Code Crim. Proc. art. 1.051(c). Also note that neither of the first two boxes is checked because the monitor's felony sample was less than 90% timely. The monitor did not see any difference in appointment procedures for bonded or detained defendants.

²⁴ Tex. Code Crim. Proc. art. 1.051(j). *Rothgery v. Gillespie County*, 554 U.S. 191 (2008). *Rothgery* held that a criminal defendant's initial appearance before a magistrate judge, where he learns the charge against him and his liberty is subject to restriction, marks the initiation of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel.

²⁵ Tex. Code Crim. Proc. art. 1.051(f-2).

²⁶ Several cases showed an appointment of counsel, but the monitor could not determine when counsel was requested.

The monitor's sample of felony case files fell below the Commission's threshold for presuming that a jurisdiction's appointment procedures ensure timely appointments / denials of indigence. A possible reason for the late appointments in the monitor's sample is that the statutory time frames for appointment of counsel are too tight to allow for both a review of financial qualifications by the Indigent Defense Eligibility Specialist and then a transfer of the request to the appropriate court for appointment of counsel. The handoff between departments appears to take at least one day, but the County only has one working day to make the appointment of counsel.

Recommendation 3: Collin County must implement processes that ensure timely appointment of counsel in felony cases.

Misdemeanor Appointments:

The appointment procedures for misdemeanor cases is the same as for felony cases, except for instances when a defendant makes a request for counsel to the Indigent Defense Eligibility Specialist but a case has already been filed against a defendant. In these instances, the Indigent Defense Eligibility Specialist makes the selection of counsel from the wheel. There is no extra step of going to the court to make the appointment of counsel.

The monitor examined 125 misdemeanor cases filed in FY2011 (October 2010 – September 2011). From this sample the monitor was able to determine the timeliness of counsel appointments in 42 cases.²⁷ Of these 42 cases, 39 received timely appointments of counsel / denials of indigence (93% timely). See the following table for a summary of data showing the timeliness of counsel appointments.

Table 5: Times to Appointment in Misdemeanor Cases

| Collin Felony Appointment Sample Data | Sample Size | Number from sample | Percent |
|---|-------------|--------------------|--------------|
| Number of Case Files Examined | 125 | | |
| Case Files with Defendant Receiving Appointed Counsel | | 50 | 40.0% |
| Case Files with Defendant Retaining Counsel | | 57 | 45.6% |
| Pro Se Case Files (6 still active) | | 18 | 14.4% |
| Appointment / Denial of Indigence Occurred in: | | | |
| 0 work days | 42 | 26 | 61.9% |
| 1 work day + 24 hour transfer | | 13 | 31.0% |
| Timely appointments | | 39 | 92.9% |
| Late appointments (more than 1 work day) | | 3 | 7.1% |

The monitor's sample of misdemeanor case files meets the Commission's threshold for presuming that a jurisdiction's appointment procedures ensure timely appointments / denials of indigence.

Commendation 7: Collin County's procedures for appointment of counsel in misdemeanor cases meet the Commission's threshold for presuming that a jurisdiction's processes are timely.

²⁷ Several cases showed an appointment of counsel, but the monitor could not determine when counsel was requested.

Waivers of Counsel:

Under Article 1.051(f) of the Code of Criminal Procedure, a defendant may voluntarily and intelligently waive the right to counsel. However, under 1.051(f), waivers obtained in violation of 1.051(f-1) or (f-2) are presumed invalid. Article 1.051(f-1) disallows the attorney representing the state from communicating with a defendant with a pending request for counsel or from initiating a waiver of counsel from a defendant. Article 1.051(f-2) disallows the court from encouraging the defendant to communicate with the attorney representing the state before the court advises the defendant of the right to counsel and the procedures for requesting counsel.

From the monitor's examination of misdemeanor case files, the monitor found ten pro se misdemeanor pleas. The monitor did not find any pending requests for counsel when waivers of counsel were signed. A procedure appeared to be in place to rule on all requests for counsel. The monitor did find one case where a defendant pled pro se, but in which there was no waiver of counsel in the case file. The misdemeanor courts appeared to have procedures in place to obtain waivers of counsel prior to obtaining a pro se plea, and so it is possible that the waiver was inadvertently left out of the case file.

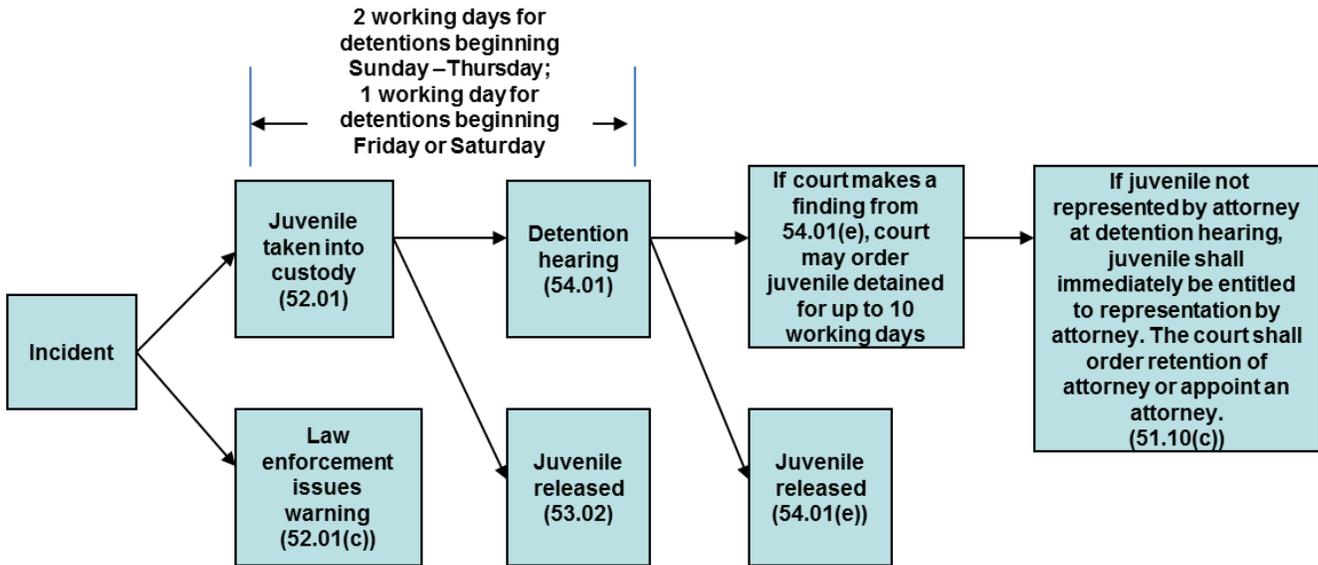
Local Practices Compared to Juvenile Statutory Provisions

- ☑ If the child was not represented by an attorney at the detention hearing and a determination was made to detain the child, the child shall be immediately entitled to representation by an attorney.²⁸
- ☐ If the child was not detained, an attorney must be appointed on or before the fifth working day after the date the petition for adjudication, motion to modify, or discretionary transfer hearing was served on the child.²⁹

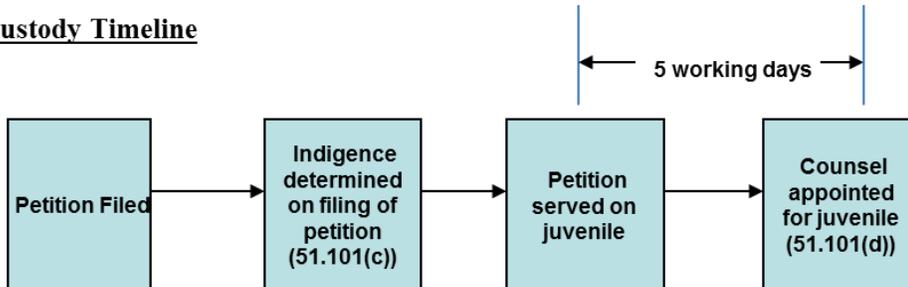
Juvenile Appointments:

Figure 2: Statutory Attorney Appointment Timeline for Juveniles
(relevant Texas Family Code references are listed in parentheses)

In-custody Timeline



Out-of-custody Timeline



²⁸ Tex. Fam. Code § 51.10(c).

²⁹ Tex. Fam. Code § 51.101(c)-(d). The box in this section was not checked because the monitor’s sample of cases was less than 90% timely.

The monitor examined the timeliness of indigence determinations in instances when the juvenile was detained and in instances when a petition was served on the out-of-custody juvenile. To ascertain the timeliness of local processes, the monitor examined 79 juvenile cases filed between January 2011 and October 2011 and observed a juvenile detention hearing.

Juvenile Detention Hearings

Under Section 51.10 of the Family Code, a detention hearing may be conducted without the presence of an attorney. However, if there is a decision to detain the juvenile, Section 51.10(c) requires either an order to retain counsel or an immediate appointment of counsel. If no attorney was present for the hearing, the attorney who is subsequently appointed or retained may request a de novo hearing under Section 54.01(n) of the Family Code.

In Collin County, a single attorney represents all juveniles at a detention hearing on a given day. This attorney maintains responsibility over many matters until another attorney is appointed for the juvenile. At the next detention hearing, another attorney may represent the juvenile, and this attorney takes over the responsibilities from the previous attorney. In many instances, the attorney from the detention hearing will continue to act on behalf of a juvenile after the detention hearing until prosecutorial actions against the juvenile are dismissed. The judge over juvenile matters has tried to designate her highly qualified attorneys for detention hearings. This strategy allows for better screening of juvenile matters, so that careful thought is given as to whether prosecutorial actions against the juvenile can be dismissed.

The monitor observed a detention hearing for a single juvenile. Counsel met with the juvenile prior to the hearing and represented the juvenile at the hearing. Counsel appeared to be well aware of the issues present in the case. The juvenile was released after the hearing.

The monitor examined 79 juvenile case files, 36 of which contained at least one juvenile detention hearing. All of these detention hearings had an attorney present. As a result of the initial detention hearings, the juvenile was detained in 27 of these cases and released in 9 of the cases. The monitor found second detention hearings for 18 of this group of cases. In the sub-sample of juveniles with second detention hearings, all juveniles were represented by attorneys at these detention hearings. Twelve (12) of these juveniles were detained, and 6 were released.

Commendation 8: Collin County's processes ensure appointment of counsel at juvenile detention hearings. The monitor's sample of juvenile cases showed that appointment of counsel for juveniles with detention hearings was 100% timely.

Petitions Served on the Juvenile

Under Section 51.101(c) and (d) of the Family Code, once a petition is served on the juvenile, the court has five working days to appoint counsel for the juvenile. This requirement can be problematic if the court is not able to quickly meet with the parents and makes appointments of counsel only after receiving a request for counsel from the parents.

The monitor examined case files to see if counsel was appointed timely for instances when a petition was served on the juvenile. The monitor found nineteen instances where counsel was appointed within five working days of serving the juvenile with a petition, and six instances where the time to appointment went beyond this time period. The Commission's administrative rules require that a recommendation be made to a county if the monitor's sample of case files is less than 90% timely. In instances where the juvenile is served with a petition, the monitor's sample was 76% timely. A possible reason for some of the untimely appointments is that the court may not have received a request for counsel within the required time frames for making the appointment. If the court could find a method to

consult with families about their indigent status prior to the time frame set by Section 51.101 of the Family Code, any issues with untimely appointments could probably be cured.

Recommendation 4: Collin County must implement processes that ensure timely appointment of counsel when there is a petition served on a juvenile who is out of custody

See the following table for a summary of the timeliness of counsel appointment in juvenile matters.

Table 6: Times to Appointment in Juvenile Cases

| Collin Juvenile Appointment Sample Data | Sample Size | Number from sample | Percent |
|---|-------------|--------------------|-------------|
| Number of Juvenile Case Files Examined | 79 | | |
| TIMELINESS OF COUNSEL APPOINTMENTS FOR DETENTION HEARINGS | | | |
| Number of instances from sample where a detention hearing was conducted with a decision to detain the juvenile and the monitor could determine whether (on the day of the hearing): ³⁰ <ul style="list-style-type: none"> • An attorney was present; • An attorney had been appointed; or • There was an order to retain counsel. | | 39 | |
| Number of instances where the case file indicated that there was (on the day of the hearing): <ul style="list-style-type: none"> • An attorney was present; • An attorney had been appointed; or • There was an order to retain counsel. | | 39 | 100% |
| TIMELINESS OF COUNSEL APPOINTMENTS WHEN THE JUVENILE WAS SERVED WITH A PETITION | | | |
| Petitions involving retained counsel | | 35 | |
| Petitions involving appointed counsel | | 25 | |
| Petitions filed where juvenile received counsel within 5 working days of being served: ³¹ | | 19 | 76% |
| Petitions filed where juvenile received counsel more than 5 working days after being served: | | 6 | 24% |

³⁰ The monitor examined 27 case files where the juvenile was detained after the initial detention hearing and 12 case files where the juvenile was detained after the second detention hearing.

³¹ For the timeliness of appointing counsel in instances when the juvenile was served with a petition, the monitor only considered sample cases where counsel was appointed. The monitor did not consider petitions with retained counsel.

Core Requirement 5. Institute a fair, neutral, and non-discriminatory attorney selection process.

Local Practices Compared to Adult and Juvenile Statutory Provisions

- Rotational method: The court must appoint an attorney from among next five names on the appointment list in the order in which the attorneys' names appear on the list, unless the court makes a finding of good cause on the record for appointing an attorney out of order.³²
- Public Defender: The system must meet the requirements set out in Article 26.044 of the Code of Criminal Procedure. The appointment process must be listed in the indigent defense plan.³³
- Alternative appointment method:³⁴
 - The local processes must be established by vote of two-thirds of the judges.
 - The plan must be approved by presiding judge of administrative judicial region.
 - The courts must allocate appointments reasonably and impartially among qualified attorneys.
- For a contract defender program, the county must meet contract defender standards.³⁵

Jurisdiction's Process

Felonies:

Felony appointments of counsel are made through either the Indigent Defense Eligibility Specialist or through a district judge. The Indigent Defense Eligibility Specialist makes appointments of counsel for inmates arrested for felony offenses that have not been filed. The district judges make appointments of counsel for cases that have been filed. Felony appointments are made on a rotating basis according to four graduated lists and a death penalty list.

The monitor examined the distribution of felony cases paid to attorneys on the felony appointment lists. The monitor found 79 attorneys on the felony appointment lists that were paid for felony appointments in FY2011 (October – September 2011).³⁶ During FY2011, the top eight attorneys (top 10.1% of recipient attorneys) received 21.7% of available cases paid. This distribution is 2.1 times their representative share and within the Commission's threshold for presuming that a jurisdiction's appointment system is fair, neutral, and non-discriminatory (threshold of three times the representative share of the attorneys closest to the top ten percent of recipient attorneys). See Appendix D for a pie chart showing the distribution of felony cases.

Commendation 9: Collin County's distribution of felony appointments falls well within the Commission's level for presuming that a jurisdiction's appointment processes are fair, neutral, and non-discriminatory.

³² Tex. Code Crim. Proc. art. 26.04(a). Only one of the boxes in this section needs to be met to meet statutory requirements.

³³ Tex. Code Crim. Proc. art. 26.044.

³⁴ Tex. Code Crim. Proc. art. 26.04(g)-(h).

³⁵ 1 TAC §§174.10-174.25.

³⁶ The appointment list used for the review was the one that was current at the time of the monitor's visit in September 2012. The monitor attempted to match payments to these names. In most cases, the name of the recipient matched the name of the attorney on the appointment list, but in some cases, a law firm name was listed as the recipient of the payment. The monitor attempted to match the most likely attorney from the respective firm with an attorney from the appointment list. Appendix D lists the payee names with the matched appointment list names. In some instances (where the payee was a law firm), the recipient may actually have included multiple attorneys but for purposes of this analysis was considered to be only one attorney.

Misdemeanors:

Misdemeanor appointments of counsel are made on a rotating basis by the Indigent Defense Eligibility Specialist. The monitor examined the distribution of misdemeanor cases paid to attorneys on the misdemeanor appointment list. A total of 73 attorneys on the misdemeanor appointment list were paid for misdemeanor appointments in FY2011 (October 2010 – September 2011).³⁷ During FY2011, the top seven attorneys (top 9.6% of recipient attorneys) received 18.1% of available cases paid. This distribution is 1.9 times their representative share and within the Commission's threshold for presuming that a jurisdiction's appointment system is fair, neutral, and non-discriminatory (threshold of three times the representative share of the attorneys closest to the top ten percent of recipient attorneys). See Appendix D for a pie chart showing the distribution of misdemeanor cases.

Commendation 10: Collin County's distribution of misdemeanor appointments falls well within the Commission's level for presuming that a jurisdiction's appointment processes are fair, neutral, and non-discriminatory.

Juveniles:

Appointments in juvenile delinquency matters are made by the juvenile court. Appointments made for instances when a petition has been filed are made on a rotating basis according to three graduated lists. Appointments for detention hearings are handled by attorneys-of-the-day who serve on a rotating basis. The detention hearing attorney may continue with the case until either the matter is resolved or until another attorney takes over the case. According to the juvenile court judge, detention hearing attorneys are a select group who can ably advocate for the juvenile.

The monitor examined the distribution of juvenile cases paid to attorneys on the appointment lists for juveniles. A total of 36 attorneys were listed on both the 2010 and 2011 appointment lists for juveniles and were paid for juvenile appointments in FY2011 (October 2010 – September 2011).³⁸ During FY2011, the top four attorneys (top 11.1% of recipient attorneys) received 31.4% of available cases paid. This distribution is 2.8 times their representative share and within the Commission's threshold for presuming that a jurisdiction's appointment system is fair, neutral, and non-discriminatory (threshold of three times the representative share of the attorneys closest to the top ten percent of recipient attorneys). See Appendix D for a pie chart showing the distribution of juvenile cases.

³⁷ The appointment list used was the one that was current at the time of the monitor's visit in September 2012. The monitor attempted to match payments to these names. In most cases, the name of the recipient matched the name of the attorney on the appointment list, but in some cases, a law firm name was listed as the recipient of the payment. The monitor attempted to match the most likely attorney from the respective firm with an attorney from the appointment list. Appendix D lists the payee names with the matched appointment list names. In some instances (where the payee was a law firm), the recipient may actually have included multiple attorneys but for this analysis was considered to be only one attorney.

³⁸ For juvenile cases, the monitor was able to obtain the 2010 appointment list and the 2011 appointment list. It is the monitor's procedure to ask for appointment lists for the beginning and end of the fiscal year. If the monitor is able to obtain this information, the monitor can make an examination only of attorneys who were available for appointments during the entire year. For purposes of examining the distribution of appointments, the monitor only considered attorneys who were on both the 2010 and 2011 lists. The monitor attempted to match payments to names on the appointment lists. In most cases, the name of the recipient matched the name of the attorney on the appointment list, but in some cases, a law firm name was listed as the recipient of the payment. The monitor attempted to match the most likely attorney from the respective firm with an attorney from the appointment list. Appendix D lists the payee names with the matched appointment list names. In some instances (where the payee was a law firm), the recipient may actually have included multiple attorneys but for this analysis was considered to be only one attorney.

Commendation 11: Collin County’s distribution of juvenile appointments falls within the Commission’s level for presuming that a jurisdiction’s appointment processes are fair, neutral, and non-discriminatory.

Appointed Caseloads

In 1973, the National Advisory Commission on Criminal Justice Standards and Goals (NAC) published maximum standard caseloads for public defenders, which are detailed in the following table.³⁹

Table 7: NAC Caseload Standards

| Type of Case | Maximum caseload |
|-------------------|------------------|
| Felonies | 150 |
| Misdemeanors | 400 |
| Juvenile | 200 |
| Mental Health Act | 200 |
| Appeals | 25 |

The NAC caseload standards represent the maximum number of cases for each category that are recommended to be handled by a single attorney in a twelve month period. Caseloads given for each category represent the recommended maximum for an attorney handling only cases in that category. For example, on average, an attorney who handles only felonies should not be assigned more than 150 felony cases annually. When an attorney handles a mixed caseload, the standard should be applied proportionally. For example, an attorney who is given 120 felonies annually is working at 80 percent of the caseload maximum and could not be assigned more than 80 misdemeanors (or 20% of the misdemeanor maximum).

The NAC standards are a good starting point in assessing caseloads but should not be accepted as universal standards. They may not account for administrative work, travel time, or other professional requirements that reduce the time an attorney can spend on cases. They also are limited by the differences in work required by cases within a category. For example a case involving felony homicide may require significantly more work than a burglary case.

According to data provided by the auditor, 163 different attorneys received payments for criminal or juvenile appointments in FY2011. Based on the number of cases paid in FY2011, two payees had appointed caseloads that narrowly exceeded the threshold established by NAC. However, the list of payees does not necessarily correspond only to single attorneys since some of the payees were law firms. It is quite possible that the two payee recipients who exceeded the NAC caseload standards did not actually exceed this threshold because these two recipients may have been law firms composed of more than one individual who received payments for appointed counsel. The median appointed caseload was 13 percent of the threshold established by NAC. See Appendix E for a listing of appointed caseloads in Collin County.

³⁹ National Advisory Commission on Criminal Justice Standards and Goals, *Task Force on Courts*, Standard 13.12 (1973).

Core Requirement 6. Promulgate standard attorney fee schedule and payment process.

Local Practices Compared to Adult and Juvenile Statutory Provisions

- ☑ Payments shall be in accordance with a schedule of fees adopted by the judges.⁴⁰
- ☑ No payment shall be made until the judge approves payment after submission of the attorney fee voucher.⁴¹
- ☑ If the judge disapproves the requested amount of payment, the judge shall make written findings stating the amount that the judge approves and each reason for approving an amount different from the requested amount.⁴²
- ☑ Expenses incurred without prior court approval shall be reimbursed if the expenses are reasonably necessary and reasonably incurred.⁴³

Jurisdiction's Process

The monitor interviewed the auditor's office, and the auditor's office appeared to have procedures for making proper payments and for accurately tracking indigent defense expenses and cases. According to the Indigent Defense Expense Report (IDER) submitted by the auditor to the Commission for FY2011, Collin County made indigent defense payments in 1942 non-capital felony cases, 15 capital murder felony cases, 2499 misdemeanor cases, 750 juvenile cases, and 84 appeals cases (felony, misdemeanor, and juvenile combined). According to interviews, payments are not made without a judge's signature. After a payment is made, cases are tracked so that multiple payments to the same case number do not result in the recording of multiple cases paid, and vouchers with multiple cases listed do not result in the recording of only a single case paid.

Commendation 12: The auditor's office appeared to have procedures for making proper payments and for accurately tracking indigent defense expenses and cases.

The monitor made an examination into the number of cases in which investigative or expert witness expenses were incurred for indigent defendants. The National Study Commission on Defense Services (NSC) drafted a standard for investigative expenses⁴⁴ using caseloads based on the NAC public defender standard (see Table 7), which calls for: one full time investigator for every 450 felony cases; one full time investigator for every 1200 misdemeanor cases; and, one full time investigator for every 600 juvenile cases. Based on the number of appointments in non-capital felony, misdemeanor, and juvenile cases in 2011, one would expect that 7.7 full-time investigators would be required to handle the investigations of Collin County's indigent defense cases under the NSC standard. The number of cases with investigative expenses incurred appears to less than would be required under the NSC standard. See Table 8 and Table 9 which show the number of indigent cases with investigative and expert witness expenses incurred in 2011.

⁴⁰ Tex. Code Crim. Proc. art. 26.05(b). These boxes are checked because the County appears to have a standard process for attorneys to request payment and to receive only payments that were approved by the appointing judge. The monitor did not go through individual vouchers to ensure that statutory requirements were followed.

⁴¹ Tex. Code Crim. Proc. art. 26.05(c).

⁴² *Id.*

⁴³ Tex. Code Crim. Proc. art. 26.05(d). Tex. Code Crim. Proc. art. 26.052(h).

⁴⁴ National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States*, Guideline 4.1 (1976).

Table 8: Percent of Cases with Investigative Expenses

| Case Type | Total Indigent Cases | Total Cases with Investigative Expenses | Percent of Cases having Investigative Expenses |
|---|----------------------|---|--|
| Felony (capital and non-capital combined) | 1957 | 55 | 2.8% |
| Misdemeanor | 2499 | 5 | 0.2% |
| Juvenile | 750 | 0 | 0.0% |

Table 9: Percent of Cases with Expert Witness Expenses

| Case Type | Total Indigent Cases | Total Cases with Expert Witness Expenses | Percent of Cases having Expert Witness Expenses |
|---|----------------------|--|---|
| Felony (capital and non-capital combined) | 1957 | 12 | 0.6% |
| Misdemeanor | 2499 | 0 | 0.0% |
| Juvenile | 750 | 0 | 0.0% |

Statutory Data Reporting

Local Practices Compared to Statutory Provisions

- ☑ The county auditor shall prepare and send to OCA an annual report of legal services provided in the county to indigent defendants during the fiscal year and an analysis of the amount expended:
 - ☑
 - In each district, county, statutory county, and appellate court
 - ☑
 - In cases for which a private attorney is appointed for an indigent defendant
 - ☑
 - In cases for which a public defender is appointed for an indigent defendant
 - ☑
 - In cases for which counsel is appointed for an indigent juvenile
 - ☑
 - For investigation expenses, expert witnesses expenses, or other litigation expenses.

According to Section 79.036(e) of the Texas Government Code, the county auditor (or other person designated by the commissioners' court) must annually prepare and send indigent defense data to the Commission. This data is to include the total expenses for cases in which an attorney was appointed for an indigent defendant or indigent juvenile in each district court, county court, statutory county court, and appellate court. The data is to be submitted in the form and manner prescribed by the Commission and is to include an analysis of the amount expended by the county. The auditor's office timely completed the annual indigent defense expense report and maintained supporting data.

Commendation 13: As mandated by Section 79.036 of the Texas Government Code, the Collin County Auditor's Office completed the annual indigent defense expenditure report in a timely manner and maintained relevant supporting data.

County Indigent Defense Plans

The Fair Defense Act (FDA) requires the adoption and publication of written plans for appointment of counsel in criminal and juvenile cases. It also requires the local administrative judges and juvenile board chairman to submit these plans to the Commission no later than November 1 of each odd-numbered year pursuant to Section 79.036, Government Code. This is also a requirement to be eligible to receive grant funds from the new Commission.

Commendation 14: As mandated by Section 79.036 of the Texas Government Code, Collin County made a timely submission of its indigent defense plans that describe the procedures for appointment of counsel in criminal and juvenile cases. All required elements of the plans were included in the plans.

Conclusion

The monitor was impressed with Collin County's dedication to indigent defense. The monitor enjoyed meeting with court personnel and was pleased with the commitment to serving the community.

Appendix A – District Courts’ Indigent Defense Plan

Collin District Courts Plan Prompt Magistration

12/3/2010

LOCAL RULES TO IMPLEMENT THE TEXAS FAIR DEFENSE ACT 2009-2010 PLAN STANDARDS AND PROCEDURES RELATED TO APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS IN FELONY CASES IN COLLIN COUNTY

To implement the Texas Fair Defense Act (FDA, Acts 2001, 77th Leg.), the following Local Rules of Administration are adopted under Texas Local Government Code 74.093, effective January 9, 2009.

SECTION ONE APPOINTING COUNSEL

1.01 Procedures for Timely Appointment of Counsel

The Collin County district judges hereby designate all justices of the peace and municipal court judges within Collin County to appoint counsel at arraignment for indigent defendants with felony charges, except for:

a. capital cases, which will be made by the presiding judge of the district court which is next in rotation. The affidavit and request shall be immediately faxed to the local administrative district judge for immediate action; and

b. probation revocations and other pending matters where the magistrate can reasonably ascertain that the case is presently assigned to a district court, in which event the affidavit and request (together with any identifying information such as a cause number) shall be immediately faxed to the appropriate district judge for immediate action.

All persons confined in state custody in Collin County shall be arraigned as soon as practicable after their confinement and at least within 48 hours of arrest.

Each magistrate must inform and explain to the accused person of their right to counsel and right to appointed counsel.

Each magistrate must ensure that reasonable assistance is provided to the accused person in completing forms necessary to request appointed counsel.

Each magistrate must make a record of:

1. informing the accused of the accused's right to request appointment of counsel;
2. whether the accused wants to request appointment of counsel; and
3. whether the person requested court appointed counsel.

For detained persons, counsel shall be appointed not later than the end of the first working day after the date on which the receipt of the request for appointment of counsel. If the accused does not speak English, or is deaf, the accused shall be provided with an interpreter. Counsel shall be appointed from among the next five names on the approved attorney list in the order in which the names appear on the list unless the court makes a finding of good cause on the record.

Appointed counsel shall make every reasonable effort to contact the defendant not later than the end of the first working day after the date on which the attorney is appointed and shall represent the defendant until charges are dismissed, the defendant is acquitted, appeals are exhausted, or the attorney is relieved of his duties by the court or replaced by other counsel after a finding of good cause entered on the record.

1.02 Compliance with Texas Fair Defense Act

The appointing magistrates are directed to review and comply with the Texas Fair Defense Act.

Indigence Determination Standards

12/8/2009

PART THREE

PROCEDURES FOR INDIGENCY DETERMINATION

3.01 Definitions. As used in this rule:

a. **"Total income"** shall include all income of the defendant and spousal income available to the defendant. In the case of a juvenile defendant, the child's parents or other person determined responsible for the support of the child income shall be considered. Total income shall include wages, salaries, tips, taxable interest, dividends, capital gains, business income, IRA distributions, pensions and annuities, rental real estate, royalties, partnerships, S corporations, trusts, etc., farm income, unemployment compensation, Social Security benefits, and other income. Unless there has been a substantial change in income, total income will be determined from line 22 of the most recent U.S. Individual Income Tax Return - 1040 or line 4 of form 1040EZ.

b. **"Household size"** shall be determined by the number of dependants claimed on the most recent U.S. Individual Income Tax Return 1040 or 1040EZ. If a U.S.

Individual Income Tax Return has not been filed, household size shall mean all individuals who are dependent on the defendant for financial support.

c. **"Liquid assets"** shall include but are not limited to cash, savings, checking accounts, stocks, bonds, certificates of deposit, and equity in real and personal property that can be readily converted to cash, other than assets and property exempt from attachment under state law.

3.02 Financial Considerations

The financial standards set forth below shall be used to determine whether a defendant is indigent and shall be applied equally to each defendant in the county. A defendant is considered indigent if:

a. their total income does not exceed 125% of the Federal Poverty Guidelines established and revised annually by the U.S. Department of Health and Human services and published in the Federal Register; or 125 % of the Federal Poverty Level (2009). See attached exhibit.

b. if the defendant and defendant's spouse were not required by law to file the most recent U.S. Individual Income Tax return (either 1040 or 1040EZ) due to gross income below the filing requirements; and

c. if the defendant and defendant's spouse liquid assets do not exceed \$2,500; or

d. whose liquid assets do not exceed double the estimated cost of obtaining competent private legal representation on the offense(s) with which the defendant is charged.

3.03 Other Considerations

A defendant is considered indigent if the defendant:

a. is currently serving a sentence in a correctional institution, is currently held in custody, is currently residing in a mental health facility, or is the subject of proceeding in which admission or commitment to such a mental health facility is sought; and does not have liquid assets in excess of 3.02 c.

b. at the time of requesting appointed counsel, the defendant or defendant's dependents have been determined to be eligible to receive food stamps,

Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, public housing or Collin County Indigent Health Care.

3.04 Factors Not to be Considered

- a. A defendant's posting of bail or ability to post bail may not be considered, except as provided by law, in determining whether the defendant is indigent. Even when a defendant has posted bail, the defendant's financial circumstances are measured by the financial standards stated in this rule.
- b. The resources available to friends or relatives of the defendant may not be considered in determining whether the defendant is indigent. Only the defendant's financial circumstances as measured by the financial standards stated in this rule shall be used as the basis for determining indigence.
- c. A defendant shall not be denied the appointment of counsel merely because the person is employed.

3.05 Procedures for Determining Indigence.

- a. As soon as possible following arrest, and in any event not later than the Article 15.17 hearing, each arrested person who wants to request appointment of counsel shall be provided with a form on which the arrested person will provide under oath the necessary information concerning the person's financial resources and will indicate that the person requests appointment of counsel. The arrested person will be provided reasonable assistance in completing the form. A copy of the form is attached hereto as Affidavit of Indigency.
- b. The form requesting appointment of counsel and containing the information concerning the arrested person's financial resources will be transmitted to the appointing judge or person(s) designated by the judges to determine indigency.
- c. The appointing judge or person(s) designated by the judges to appoint counsel will determine whether the person meets the financial standards for indigence in Rule 3.02. The determination will be recorded on the form requesting appointment of counsel and the form will be filed with the other orders in the case.
- d. The arrested person may be required by the court designee, magistrate, the appointing judge, or the judge presiding over the case to respond to examination regarding the person's financial resources.
- e. A written or oral statement elicited under this article or evidence derived from the statement may not be used for any purpose, except to determine the defendant's indigence or to impeach the direct testimony of the defendant regarding the defendant's indigence.
- f. A defendant determined to be indigent is presumed to remain indigent for the remainder of the case unless a material change in the defendant's financial circumstances occurs. Counsel shall notify the Court if a material change occurs. Release from custody or change of employment status are changes which shall be brought to the attention of the Court within 14 days.
- g. A defendant's status as indigent or not indigent may be reviewed in a formal hearing at any stage of a court proceeding based on evidence of a material change in the defendant's financial circumstances. A defendant's status as indigent or not indigent also may be reviewed in a formal hearing at any stage of a court proceeding based on additional information regarding financial circumstances, subject to the presumption. . If a defendant previously determined to be indigent subsequently is determined not to be indigent, the attorney shall be compensated by the county in accordance with these Rules for time reasonably expended on the case.

h. Contingent on the employment of an indigency eligibility specialist, the judges shall designate the specialist to review and audit requests for indigency. A copy of the request form shall be transmitted to the indigency specialist for investigation and review. Income verification and determination will be completed no later than the end of the first working day after the date on which the indigency specialist receives the defendant's request for appointment of counsel.

The indigency eligibility specialist shall notify the defendant and the Court of the outcome of the determination. A defendant determined not to be indigent who remains in custody without obtaining counsel shall have his indigency status reviewed at least every 14 days.

3.06 Partial Indigency

a. The court may find a defendant to be partially indigent if the person is able to pay some part of the cost of legal representation and if the payment does not impose manifest hardship on the accused or the accused's household.

b. An accused person found to be partially indigent may be ordered by the court to pay, while the case is pending, monthly installments commensurate with the accused's ability to pay based upon his/her income and assets.

3.07. Reimbursement

a. An accused person who is found guilty, and after all appeals, if any, are exhausted, shall be required to reimburse Collin County a sum not more than the amount paid by the County to the accused's attorney, provided however that a finding is made at the time of final disposition that the accused has the ability to reimburse the County without substantial financial hardship. Such reimbursement shall be taxed as costs in the accused person's case.

Minimum Attorney Qualifications

12/8/2009

2.02 Minimum Standards for Court Appointed Attorneys

The minimum standards for placement on the list of qualified attorneys shall be:

1. Licensed and in good standing with the State Bar of Texas;
2. Two years of experience in criminal law (with six months in Collin County);
3. Exhibited proficiency, professionalism, and reliability;
4. Maintain an office in Collin County with either a fax- or email access;
5. Complete at least ten hours per year of CLE in criminal law; and
6. Have tried at least two jury trials as lead counsel.

2.03 Graduated Lists

Applications will be received for, and lists approved for, the following graduated lists. Each list details the qualifications required for placement on the list:

1st and 2nd degree felonies

Board Certified in Criminal Law,
OR

1. Meet minimum qualifications of Rule 2.02, and
2. Eight jury trials, including at least four felony jury trials as lead counsel.

3rd degree and SJF

1. Meet minimum qualifications of Rule 2.02, and
2. Four jury trials as lead counsel.

Appeals and Non-Capital Writs

1. Meet minimum qualifications of Rule 2.02, and
2. Demonstrate proficiency by submitting writing samples to the courts.

Motions (Motions to Revoke, Petitions to Adjudicate, Extraditions, and other miscellaneous matters)

1. Meet minimum qualifications of Rule 2.02.

2.04 Selection and Appointment of Counsel in Death Penalty Cases

(a) Whenever a capital felony case is filed, the presiding judge in the district court in which the case is filed shall appoint two attorneys pursuant to the following criteria from the First Administrative Region; unless and until the state gives notice in writing that the state will not seek the death penalty.

1. At least two attorneys shall be appointed. One designated as first chair, or lead attorney, the other as second chair;
2. The first and second chair attorneys must be members of the State Bar of Texas;
3. The first chair attorney must exhibit proficiency and commitment to providing quality representation to defendants in death penalty cases. The first chair's commitment and proficiency must include at least five years experience in litigation of serious felony matters and experience in at least one capital case;
4. The first chair attorney must have tried to a verdict as lead defense counsel a significant number of felony cases, including homicide trials and other trials for offenses punishable as first or second degree felonies, or capital felonies;
5. The first chair attorney must have trial experience in the use of and challenge to mental health or forensic expert witnesses, and in investigating and presenting mitigating evidence at the penalty stage of a death penalty trial; and
6. The first chair attorney must have participated in continuing legal education courses or other training relating to criminal defense in death penalty cases within the previous year and must have completed a minimum of twelve hours of such training over the previous two year period.
7. The second chair attorney must have at least two years experience in representing individuals charged with felony matters; and
8. The second chair attorney must have completed a minimum of eight hours of continuing legal education courses or other training relating to criminal defense in death penalty cases over the previous two year period.

(a) The judge of the court in which a capital felony case is filed shall appoint counsel to represent an indigent defendant as soon as practicable after charges are filed. At least one of the attorneys appointed must be from the master list of attorneys eligible for appointment to death penalty cases, unless the State gives notice in writing that the State will not seek the death penalty.

(b) The Judge of the Court in which the case is pending shall determine which attorneys from the approved list are to be appointed, and shall decide which attorney shall be designated as first chair or lead attorney. The Judge appointing counsel shall ensure that the attorney designated as first chair or lead attorney meets the qualifications for first chair or lead attorneys set forth herein.

(c) To be assigned as counsel in a death penalty case an attorney must meet the minimum standards set forth in Article 26.052 (d) (2), Tex. Code Crim. Proc, and the standards adopted by the First Administrative Judicial Region. Ordinarily, trial counsel shall continue to represent the indigent defendant through all appeals. This list is to be used when circumstances require the appointment of counsel at this stage of the proceedings.

2.05 Annual Renewal and Review of Counsel

(a) Each year, appointed court appointed counsel shall complete and file a renewal application (Exhibit "D") which verifies their contact information and other required information. Counsel shall also attach a copy of the State Bar CLE compliance form as proof of their compliance with the annual criminal law CLE requirements. The renewal application shall be filed with the Indiana Defense Office by December 31 of each year.

2.06 Removal and Review of Counsel

Any district judge may immediately remove from the appointment list any attorney who intentionally or repeatedly fails to fulfill their obligations to their client or the Court. Upon such event, the board of judges shall review the matter at its next scheduled meeting. Unless a majority of the board of judges votes in favor of restoring the attorney's name, the attorney's name shall not be restored to the list of attorneys eligible for appointment.

Prompt Appointment of Counsel

12/3/2010

A. Prompt Appointment of Counsel

- i. Counsel shall be appointed as soon as possible to indigent defendants, but no later than the end of the first working day after the date on which the appointing authority receives the defendant's request for court appointed counsel. Working day means Monday through Friday, excluding official state holidays. Counsel must be appointed whether or not a case has been filed in the trial court.
- ii. If the defendant is released from custody prior to the appointment of counsel, appointment of counsel is not required until the defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.
- iii. Appointment Authority
 1. If no case has been filed in the trial court, the appointing authority for misdemeanors is: _____
 2. If no case has been filed in the trial court, the appointing authority for felonies is: _____
 3. If the case has been filed in the trial court, the appointing authority is: _____

B. Defendants Appearing Without Counsel - If a defendant appears without counsel in any adversary judicial proceeding that may result in punishment by confinement:

- i. The court may not direct or encourage the defendant to communicate with the attorney representing the state until the court advises the defendant of the right to counsel and the procedure for requesting appointed counsel and the defendant has been given a reasonable opportunity to request appointed counsel.

- ii. If the defendant has requested appointed counsel, the court may not direct or encourage the defendant to communicate with the attorney representing the state unless the appointing authority has denied the request and, subsequent to the denial, the defendant:
 - 1. Has been given a reasonable opportunity to retain and has failed to retain appointed counsel; or
 - 2. Waived or has waived the opportunity to retain private counsel.
- iii. The attorney representing the state may not:
 - 1. Initiate or encourage an attempt to obtain from the defendant a waiver of the right to counsel; or
 - 2. Communicate with a defendant who has requested the appointment of counsel, unless the appointing authority has denied the request and subsequent to the denial, the defendant:
 - a. Has been given a reasonable opportunity to retain counsel; or
 - b. Waives or has waived the opportunity to retain private counsel.

C. Waiver of the Right to Counsel

- i. A defendant may voluntarily and intelligently waive the right to counsel.
- ii. A waiver obtained in violation of section IV.B above is presumed invalid.
- iii. If a defendant wishes to waive the right to counsel for purposes of entering a guilty plea or proceeding to trial, the court shall advise the defendant of the nature of the charges against the defendant and, if the defendant is proceeding to trial, the dangers and disadvantages of self-representation. If the court determines that the waiver is voluntarily and intelligently waived, the court shall provide the defendant with a statement substantially in the following form, which, if signed by the defendant, shall be filed with and become part of the record of the proceedings.

“I have been advised this ___ day of ____, 2___, by the (name of court) Court of my right to representation by counsel in the case pending against me. I have been further advised that if I am unable to afford counsel, one will be appointed for me free of charge. Understanding my right to have counsel appointed for me free of charge if I am not financially able to employ counsel, I wish to waive that right and request the court to proceed with my case without an attorney being appointed for me. I hereby waive my right to counsel. (signature of defendant)”
- iv. A defendant may withdraw a waiver of the right to counsel at any time but is not entitled to repeat a proceeding previously held or waived solely on the grounds of the subsequent appointment or retention of counsel. If the defendant withdraws a waiver, the trial court, in its discretion, may provide the appointed counsel 10 days to prepare.

Attorney Selection Process

12/8/2009

SECTION TWO COMPLIANCE WITH MANDATE FOR EQUAL ALLOCATION OF APPOINTMENTS

2.01 Procedures for the Fair Allocation of Attorneys

(a) In order to meet the requirements of the Texas Fair Defense Act, and Article 26.04 (b) (6) requiring the fair, neutral and nondiscriminatory allocation of appointments among qualified attorneys, the district judges will receive written applications for court appointed attorneys and meet

periodically to approve and update the list. A copy of the application is attached hereto as Exhibit "B". The lists shall be provided to all district judges, county judges and designated magistrates, and clerks. The Information Technology Department is directed to post the list and any updates within 72 hours on the AS400 or Odyssey. The Information Technology Department shall provide the necessary programming and support to comply with the statutory requirements of rotation and identification of the 'next five names' as required by Article 26.04 (a).

(b) The courts may waive the requirement of documenting jury trials for those attorneys whose abilities are presently well known to the judiciary.

Fee and Expense Payment Process

12/8/2009

PART FOUR PROCEDURES FOR ATTORNEY COMPENSATION

4.01 Attorney Fee Schedule

The district judges adopt (pursuant to Article 26.05 Tex. Code of Crim. Proc.) a fee schedule for appointed attorneys, attached hereto as "2009-2010 Fee Schedule for Appointed Attorneys".

Payment can vary from the fee schedule in unusual circumstances or where the fee would be manifestly inappropriate because of circumstances beyond the control of the appointed counsel.

4.02 Payment Request Form

Counsel shall submit their requests for payment on the auditor's approved Payment Request Form. Counsel seeking compensation in excess of the flat fee guidelines described in Section 4.01 shall submit their pay request, together with an explanation of the circumstances, to the administrative judge appointed for this region in accordance with Article 26.05 of the Code of Criminal Procedure.

Procedure With Prior Court Approval:

Appointed counsel may file with the trial court a pretrial ex parte confidential request for advance payment of investigative and expert expenses. The request for expenses must state, as applicable:

- (1) the type of investigation to be conducted or the type of expert to be retained;
- (2) specific facts that suggest the investigation will result in admissible evidence or that the services of an expert are reasonably necessary to assist in the preparation of a potential defense; and
- (3) an itemized list of anticipated expenses for each investigation or each expert.

The court shall grant the request for advance payment of expenses in whole or in part if the request is reasonable. If the court denies in whole or in part the request for expenses, the court shall:

- (1) state the reasons for the denial in writing;
- (2) attach the denial to the confidential request; and
- (3) submit the request and denial as a sealed exhibit to the record.

Procedure Without Prior Court Approval:

Appointed counsel may incur investigative or expert expenses without prior approval of the court. On presentation of a claim for reimbursement, the court shall order reimbursement of counsel for the expenses if the expenses are reasonably necessary and reasonably incurred. Unreasonable or unnecessary expenses will not be approved. See, Articles 26.05(d), 26.052(f), (g), & (h), Code of Criminal Procedure

4.03 Failure To Notify the Court of A Material Change In the Defendant's Financial Circumstances.

Counsel failing to comply with Section 3.05 (f) shall not be permitted to apply fee compensation in excess of the flat fee.

Plan Documents

Collin District Court 2009 Federal Poverty Guideline Percentages.pdf (11/30/2009 2:44:15 PM) [view](#)

Collin District Court Attorney Fee Schedule.doc (12/8/2009 11:24:28 AM) [view](#)

Collin District Court Attorney Fee Voucher.pdf (12/3/2010 4:27:24 PM) [view](#)

Collin District Court Local Rules To Implement The Fair Defense Act.pdf (12/8/2009 11:27:41 AM) [view](#)

Appendix B – County Courts’ Indigent Defense Plan

Collin County Courts Plan

Preamble

11/30/2009

THE COLLIN COUNTY

INDIGENT DEFENSE PLAN

(As Amended Effective December 1, 2009)

In accordance with the requirements of the Texas Fair Defense Act, Acts 2001, 77th Leg., the County Court at Law Judges of Collin County, Texas hereby adopt the following Local Rules for the appointment of attorneys in misdemeanor criminal cases.

SECTION ONE

THE COMMITTEE ON MISDEMEANOR INDIGENT DEFENSE

1.01 The Collin County Committee on Misdemeanor Indigent Defense

- a. The Collin County Committee on Misdemeanor Indigent Defense, hereafter the "Committee," is established. The Committee consists of the County Court at Law Judges of Collin County, Texas who hear criminal cases.
- b. The Committee shall establish local rules and procedures necessary for Collin County Courts at Law to comply with the Texas Fair Defense Act in misdemeanor criminal cases.
- c. The Committee hereby designates all Justices of the Peace and Municipal Judges and Associate Municipal Judges within Collin County, Texas to appoint counsel at arraignment for indigent defendants with misdemeanor charges.

Prompt Magistration

7/23/2010

SECTION TWO

WHEN THE RIGHT TO COUNSEL ATTACHES

2.01 Misdemeanor Arrest Pursuant to a Warrant

- a. If a person is arrested on a misdemeanor charge pursuant to a warrant, the person who has custody of the accused shall present the accused before a magistrate within 48 hours of the time of the accused person’s arrest. The magistrate shall deliver the admonishments contained in article 15.17 Code of Criminal Procedure. The magistrate shall also set bail, unless bail was previously set by the magistrate issuing the warrant. The magistrate shall also inform the accused of her right to counsel and make a finding of probable cause based upon the warrant. If necessary, an interpreter shall assist the accused

during the probable cause hearing. If the accused requests an attorney, signs an affidavit of indigency sworn to before the magistrate, and indigency is determined, the magistrate shall appoint counsel for the accused using the master list which is maintained on the County's AS400 System.

2.02 Misdemeanor Arrest Without a Warrant

a. If a person is arrested on a misdemeanor charge without a warrant, the person who has custody of the accused shall present the accused before a magistrate within 48 hours of the time of the accused person's arrest. If the accused person is not brought before a magistrate within 48 hours after the person's arrest, the accused person shall be released on bond, in an amount not to exceed \$5,000.00. If the person is unable to deposit money in the amount of the bond or unable to obtain a surety for the bond, the accused person must be released on personal bond.

b. If the accused person is brought before a magistrate within 48 hours, the magistrate shall deliver the admonishments contained in Article 15.17 Code of Criminal Procedure and sign the Order Finding Probable Cause included in the "Forms" section of this plan. If necessary, an interpreter shall assist the accused during the probable cause hearing. The magistrate shall make a finding of either "no probable cause" or a "finding of probable cause." A finding of probable cause must be based upon a sworn probable cause affidavit setting forth sufficient facts or by incorporating a copy of the offense report. If the magistrate makes a finding of no probable cause, the accused person shall be released from custody. If a magistrate makes a finding of probable cause, the magistrate shall inform the accused person of their right to counsel. If the accused requests an attorney, signs an affidavit of indigency sworn to before the magistrate, and indigency is determined the magistrate shall appoint counsel for the accused, using the master list which is maintained on the County's AS400 System, and notify the accused person's attorney of the appointment by fax or by email. The magistrate, upon a finding of probable cause, shall set reasonable bail.

c. As soon as possible following arrest, and in any event not later than the Article 15.17 hearing, each arrested person who wants to request appointment of counsel shall be provided with a form on which the arrested person will provide under oath the necessary information concerning the person's financial resources and will indicate that the person requests appointment of counsel. The arrested person will be provided assistance in completing the form. A copy of the form is included in the "Forms" section of this plan.

d. Prompt Appearance Before Magistrate. The law enforcement officer making the arrest and any officer who later has custody of any accused person shall ensure that the person is taken before a magistrate without unnecessary delay, but not later than 48 hours after the person is arrested, for proceedings under Article 14.06, Section (a) of the Code of Criminal Procedure.

e. Transmittal of Request for Appointed Counsel. If an arrested person requests appointment of counsel and has completed the necessary forms, the magistrate shall transmit or cause to be transmitted to the appointing judge or person (s) designated by the judges to appoint counsel the forms requesting appointment of counsel. The forms requesting appointment of counsel shall be transmitted without unnecessary delay, but not later than 24 hours after the person arrested request appointment of counsel, as stated in Article 15.17, Section (a) of the Code of Criminal Procedure.

Indigence Determination Standards

2/16/2011

SECTION THREE

3.01 Definitions. As used in this rule:

a. **“Total income”** shall include all income of the defendant and spousal income available to the defendant. In the case of a juvenile defendant, the child’s parents or other person determined responsible for the support of the child income shall be considered. Total income shall include wages, salaries, tips, taxable interest, dividends, capital gains, business income, IRA distributions, pensions and annuities, rental real estate, royalties, partnerships, S corporations, trusts, etc., farm income, unemployment compensation, Social Security benefits, and other income. Unless there has been a substantial change in income, total income will be determined from line 22 of the most recent U.S. Individual Income Tax Return – 1040 or line 4 of form 1040EZ. Upon a showing of a substantial change in income, which includes but is not limited to three consecutive and continuous months of unemployment, the defendant's total income will be brought to the attention of the judge of the court which the case is pending for further review.

b. **“Household size”** shall be determined by the number of dependants claimed on the most recent U.S. Individual Income Tax Return 1040 or 1040EZ. If a U.S. Individual Income Tax Return has not been filed, household size shall mean all individuals who are dependent on the defendant for financial support.

c. **“Liquid assets”** shall include but are not limited to cash, savings, checking accounts, stocks, bonds, certificates of deposit, and equity in real and personal property that can be readily converted to cash, other than assets and property exempt from attachment under state law.

3.02 Financial Considerations

The financial standards set forth below shall be used to determine whether a defendant is indigent and shall be applied equally to each defendant in the county. A defendant is considered indigent if:

a. their total income does not exceed 125% of the Federal Poverty Guidelines established and revised annually by the U.S. Department of Health and Human Services and published in the Federal Register; or

125 % of the Federal Poverty Level (2009)

| Size of Family Unit | Income | |
|----------------------------|-----------------|----------------|
| | Annually | Monthly |
| 1 | \$13,538 | \$1,128 |
| 2 | \$18,213 | \$1,518 |
| 3 | \$22,888 | \$1,907 |
| 4 | \$27,563 | \$2,297 |
| 5 | \$32,238 | \$2,686 |
| 6 | \$36,913 | \$3,076 |
| 7 | \$41,588 | \$3,466 |
| 8 | \$46,263 | \$3,855 |

Each additional household member; add \$7, 480 (annual) or \$623 (monthly)

SOURCE: Federal Register, Vol. 74, No. 14, January 23, 2009, pp. 4199-4202

b. if the defendant and defendant’s spouse were not required by law to file the most recent U.S. Individual Income Tax return (either 1040 or 1040EZ) due to gross income below the filing requirements; and

c. if the defendant and defendant’s spouse liquid assets do not exceed \$2,500; or

d. whose liquid assets do not exceed double the estimated cost of obtaining competent private legal representation on the offense(s) with which the defendant is charged.

3.03 Other Considerations

A defendant is considered indigent if the defendant:

a. is currently serving a sentence in a correctional institution, is currently held in custody, is currently residing in a mental health facility, or is the subject of proceeding in which admission or commitment to such a mental health facility is sought; and does not have liquid assets in excess of 3.02 c.

b. at the time of requesting appointed counsel, the defendant or defendant's dependents have been determined to be eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, public housing or Collin County Indigent Health Care.

3.04 Factors Not to be Considered

a. A defendant's posting of bail or ability to post bail may not be considered, except as provided by law, in determining whether the defendant is indigent. Even when a defendant has posted bail, the defendant's financial circumstances are measured by the financial standards stated in this rule.

b. The resources available to friends and families or relatives of the defendant may not be considered in determining whether the defendant is indigent. Only the defendant's financial circumstances as measured by the financial standards stated in this rule shall be used as the basis for determining indigence.

c. A defendant shall not be denied the appointed of counsel merely because the person is employed.

3.05 Procedures for Determining Indigence.

a. As soon as possible following arrest, and in any event not later than the Article 15.17 hearing, each arrested person who wants to request appointment of counsel shall be provided with a form on which the arrested person will provide under oath the necessary information concerning the person's financial resources and will indicate that the person requests appointment of counsel. The arrested person will be provided reasonable assistance in completing the form. A copy of the form is included in the "Forms" section of this plan.

b. The form requesting appointment of counsel and containing the information concerning the arrested person's financial resources will be transmitted to the appointing judge or person(s) designated by the judges to determine indigence.

c. The appointing judge or person(s) designated by the judges to appoint counsel will determine whether the person meets the financial standards for indigence in Rule 3.02. The determination will be recorded on the form requesting appointment of counsel and the form will be filed with the other orders in the case.

d. The arrested person may be required by the court designee, magistrate, the appointing judge, or the judge presiding over the case to respond to examination regarding the person's financial resources.

e. A written or oral statement elicited under this article or evidence derived from the statement may not be used for any purpose, except to determine the defendant's indigence or to impeach the direct testimony of the defendant regarding the defendant's indigence.

f. A defendant determined to be indigent is presumed to remain indigent for the remainder of the case unless a material change in the defendant's financial circumstances occurs. Counsel shall notify the Court if a material change occurs. Release from custody or change of employment status are changes which shall be brought to the attention of the Court within 14 days.

g. A defendant's status as indigent or not indigent may be reviewed in a formal hearing at any stage of a court proceeding based on evidence of a material change in the defendant's financial circumstances. A defendant's status as indigent or not indigent also may be reviewed in a formal hearing

at any stage of a court proceeding based on additional information regarding financial circumstances, subject to the presumption. If a defendant previously determined to be indigent subsequently is determined not to be indigent, the attorney shall be compensated by the county in accordance with these Rules for time reasonably expended on the case.

h. Contingent on the employment of an indigency investigator. The judges shall designate an investigator(s) to review and audit requests for indigency. A copy of the request form shall be transmitted to the indigency investigator for investigation and review. Income verification and determination will be completed no later than the end of the first working day after the date on which the indigency investigator receives the defendant's request for appointment of counsel. The defendant will be notified of the outcome of the determination.

3.06 Partial Indigency

a. The court may find a defendant to be partially indigent if the person is able to pay some part of the cost of legal representation and if the payment does not impose manifest hardship on the accused or the accused's household.

b. An accused person found to be partially indigent may be ordered by the court to pay, while the case is pending, monthly installments commensurate with the accused's ability to pay based upon his/her income and assets.

3.07 Reimbursement

a. An accused person who is found guilty, and after all appeals, if any, are exhausted, shall be required to reimburse Collin County a sum not more than the amount paid by the County to the accused's attorney, provided however that a finding is made at the time of final disposition that the accused has the ability to reimburse the County without substantial financial hardship. Such reimbursement shall be taxed as costs in the accused person's case.

Minimum Attorney Qualifications

11/30/2009

SECTION FOUR

4.01. Residency Requirement and Objective Competency Standards

a. To be eligible to receive appointments in misdemeanor cases, an attorney must:

1. Either reside in and maintain her principal office in Collin County; or
2. Demonstrate that the majority of her criminal law practice is based in Collin County, Texas courts by showing that as to the total number of criminal cases pending in a court-of-record in which she appeared in and served as the attorney-of-record during the twelve months preceding her application, that at least eighty percent of those cases were cases pending in a court-of-record in Collin County, Texas. In addition, an attorney seeking to remain on the list of attorneys eligible to receive appointments shall, not later than December 31 in every year after the year the attorney initially became qualified to accept appointments, file an affidavit listing the criminal cases in which she appeared in and served as the attorney-of-record during the previous twelve month period, eighty percent of which must have been in cases pending in a court-of-record in Collin County, Texas.

b. To be on the list of approved attorneys for misdemeanor appointments, an attorney must meet one of the three following criteria:

1. Board Certification in Criminal Law by the Texas Board of Legal Specialization; or

2. Completion of at least two years of law practice with at least three misdemeanor jury trials (which may be second chair) during the attorney's career and completion of at least sixteen hours of criminal law continuing legal education in the twenty-four month period preceding application; or

3. Demonstrate competence using other criteria to be approved by the Committee including, but not limited to, years of legal experience, board certification in areas of law other than criminal law, number of civil and jury trials completed, number of hours of criminal law CLE and professional reputation for handling criminal cases.

4.02. Creation Of Master List Of Attorneys

- a. An attorney who wishes to be included in the master list of attorneys from which court appointments are made must submit a written application to the Committee, a copy of which is included in the "Forms" section of this plan, to the County Clerk's Office.
- b. The Committee shall meet periodically to review attorney applications. A majority of the Committee, by a secret vote, is required to approve an attorney's application for inclusion on the master list. If an application is rejected for placement on the master list, the attorney may reapply after ninety days. The master list shall be posted in the County Clerk's office and is a public record.
- c. The Collin County Information Technology Department shall be responsible for writing and maintaining the computer software necessary to utilize the master list. The Collin County Clerk shall be responsible for updating the master list with changes, additions and deletions provided to the Clerk by the Committee.
- d. Attorneys shall initially be listed alphabetically on the master list. As new attorneys are approved, they shall be placed at the bottom of the list.

Prompt Appointment of Counsel

7/23/2010

SECTION FIVE

Counsel shall be appointed as soon as possible, but not later than the end of the first working day after the date on which the appointing judge or person(s) designated by the judges to appoint counsel receives an eligible defendant's request for counsel, as stated in Article 1.051, Section (c) of the Code of Criminal Procedure. If the defendant is released from custody prior to the appointment of counsel, appointment of counsel is not required until the defendant's first court appearance or when adversarial judicial proceedings are initiated, whichever comes first.

If a defendant appears without counsel in any adversary judicial proceeding that may result in punishment by confinement, the court may not direct or encourage the defendant to communicate with the attorney representing the state until the court advises the defendant of the right to counsel and the procedure for requesting appointed counsel and the defendant has been given a reasonable opportunity to request appointed counsel.

DUTIES OF APPOINTED COUNSEL

5.01 Professional Representation

- a. An attorney who is appointed from the master list shall personally represent the accused or withdraw from the case, after first obtaining permission from the court. An attorney must exercise the same degree of professionalism and responsibility with an appointed client as they would with a client who has retained them.
- b. An attorney who is appointed from the master list shall make every reasonable effort possible to contact her client not later than the end of the first working day after receiving notice of the appointment. The attorney must interview the defendant as soon as practicable. An attorney who receives appointments from the master list must personally appear with their client at all settings and must inform the accused that her presence is also required at all settings. Any member of the Committee may immediately remove an attorney who intentionally or repeatedly fails to fulfill her obligations to their client from the master list. Upon such event, the Committee shall review the matter at its next scheduled meeting. Unless a majority of the Committee votes in favor of adding the attorney's name to the master list, the attorney's name shall not be added.
- c. An attorney who is appointed to a case shall continue representing the accused until the accused is acquitted, a plea has become final, all appeals are exhausted, or the court makes a finding of good cause on the record permitting the attorney to withdraw and substitute other counsel.
- d. An attorney who applies for court appointments under the Plan must designate either a telephone fax number or email address for the purpose of receiving notices of appointments. A court that appoints an attorney may use either the attorney's telephone fax number or email address to notify the attorney of her appointment or court hearings. Any changes in the attorney's telephone numbers or email address must be promptly given in writing to the County Clerk for updating the master list.
- e. An attorney whose name is placed on the master list shall annually complete at least eight hours of criminal law continuing legal education and shall send a letter to the County Clerk no later than December 30 of each year verifying to the Clerk that the attorney's CLE requirements have been complied with for that calendar year.
- f. An attorney whose name is placed on the master list shall immediately notify the Collin County Clerk in writing if their law license is suspended or revoked, in which case the attorney's name shall be removed by the Clerk from the master list. An attorney, once removed from the master list because of suspension or revocation, must reapply to the Committee to have their name added to the master list.
- g. An attorney who receives appointments from the master list shall timely and truthfully submit requests for payment to the court with jurisdiction in the matter.
- h. An attorney whose name is included on the master list for appointments must notify the County Clerk in writing of any vacation plans, seminars, protracted trials, etc. where the attorney will be unavailable to accept appointments during a period of more than four calendar days.

Attorney Selection Process

11/24/2009

SECTION SIX

DUTIES OF APPOINTING COURT

6.01 Appointment of Counsel

a. A Court, or its designee, upon a proper showing of indigency under the standards set forth herein, shall appoint an attorney from the master list. The list shall be made available to all Collin County courts making criminal appointments, or their designees. The master list shall be maintained on the County's computer system. For magistrates making appointments as another court's designee, the master list will be available over the internet. After making an appointment, the appointing magistrate may fax notice of the appointment to the attorney or send notice by email. The original of the order appointing the attorney shall be forwarded to County Clerk.

b. In making an appointment, the appointing judge shall select an attorney from among the names of the next five attorneys that appear on the master list. In cases involving motions to adjudicate or motions to revoke, the accused's prior court appointed attorney, if any, shall be appointed, if that person's identity is known. If an accused person does not speak English, an attorney who speaks a language the accused can understand must be appointed.

c. If a court does not appoint one of the five attorneys next up on the master list, the court must state good cause on the record for the deviation. Good cause may include, but is not limited to, conflict of interest, attorney unavailability, request by the accused that the attorney not be appointed, inconvenience to the accused, prior representation by an attorney with knowledge of the facts in the pending case and other similar good cause. Attorneys whose names are among the five names next up on the master list, but who are not selected based upon a showing of good cause, shall have their names placed back at the top of the list.

d. Once an attorney has been appointed to an accused person, the Court may not remove the attorney unless a motion to withdraw or substitute is filed and granted, with notice to the accused. If an attorney has been appointed to represent an accused, and an appeal is filed from the accused's conviction, the original attorney shall be appointed for the purposes of appeal. If an accused receives probation or deferred adjudication, the accused's appointed attorney continues as his attorney in any subsequent revocation proceeding and must be appointed for that purpose.

Fee and Expense Payment Process

9/27/2011

SECTION SEVEN

Counsel shall be reimbursed for reasonable and necessary expenses, including expenses or investigation and for mental health and other experts. Expenses incurred with and without prior court approval shall be reimbursed, according to the procedures set forth below. When possible, prior court approval should be obtained before incurring expenses for investigation and for mental health and other experts.

No payment shall be made until judge approves payment after submission of attorney fee voucher [Art. 26.05(c), CCP]

If judge disapproves the requested amount of payment, the judge shall make written findings stating the amount that the judge approves and each reason for approving an amount different from the requested amount. [Art. 26.05(c), CCP]

INVESTIGATIVE AND EXPERT WITNESSES

7.01 Procedure with Prior Court Approval

a. Appointed counsel may file with the trial court a pretrial *ex parte confidential request for advance payment of investigative and expert expenses*. The request for expenses must state, as applicable:

- (1) the type of investigation to be conducted or the type of expert to be retained;
- (2) specific facts that suggest the investigation will result in admissible evidence or that the services of an expert as are reasonably necessary to assist in the preparation of a potential defense; and
- (3) an itemized list of anticipated expenses for each investigation or each expert.

b. The court shall grant the request for advance payment of expenses in whole or in part if the request is reasonable. If the court denies in whole or in part the request for expenses, the court shall:

- (1) state the reasons for the denial in writing;
- (2) attach the denial to the confidential request; and
- (3) submit the request and denial as a sealed exhibit to the record.

7.02 Procedure Without Prior Court Approval

Appointed counsel may incur investigative or expert witnesses without prior approval of the court. On presentation of a claim for reimbursement, the court shall order reimbursement of counsel for the expenses, if the expenses are reasonably necessary and reasonably incurred. Unreasonable or unnecessary expenses will not be approved.

PAYMENTS TO COURT APPOINTED ATTORNEYS

7.03 Hourly or Fixed Rates

a. Counsel shall be paid an hourly rate of between \$75.00 and \$125.00 for services performed under the Plan, not to exceed:

1. \$450.00 for a plea on a driving while intoxicated case plus \$100.00 each for additional cases pled on the same day, at the discretion of the judge;
2. \$350.00 for a dismissal or for all non-driving while intoxicated pleas plus \$100.00 each for additional cases plead on the same day, at the discretion of the judge;
3. \$2,500.00 for the trial of any case, including a motion for new trial; and
4. \$2,500.00 for the appeal of any case, including motions for rehearing.

b. In unusually difficult, complex or time consuming cases, an attorney may request a fee which exceeds the foregoing schedule.

Plan Documents

Collin County Court Affidavit of Indigence.doc (11/30/2009 1:55:09 PM) [view](#)

Collin County Court Annual Renewal Application to Receive Court Appointments.doc (11/30/2009 3:54:23 PM) [view](#)

Collin County Court Attorney Application for Appointment.pdf (11/30/2009 3:45:10 PM) [view](#)

Collin County Court Attorney Fee Schedule.docx (2/16/2011 2:31:25 PM) [view](#)

Collin County Court Attorney Fee Voucher.pdf (11/30/2009 1:58:40 PM) [view](#)

Collin County Court Magistrates Warning Form.doc (11/30/2009 2:46:49 PM) [view](#)

Collin County Court Order Finding Probable Cause.doc (11/30/2009 1:25:07 PM) [view](#)

Appendix C – Juvenile Indigent Defense Plan

Collin Juvenile Board Plan

Preamble

12/1/2009

To implement the Texas Fair Defense Act (FDA, Acts 2001, 77th Leg.), the following Local Rules of Administration are adopted under Texas Local Government code 74.093, effective December ____, 2009.

Prompt Detention Hearings

12/1/2009

- A. A child taken into custody must either be brought to a juvenile processing office without unnecessary delay where they may not be detained for longer than six hours pursuant to §52.025, Family Code, or another disposition authorized by §52.02, Family Code, including referral to the office designated by the juvenile board as intake for the juvenile court. The intake officer shall process the child according the requirement of §53.01, Family Code, and shall also inform the child and the child's parents of the right to appointed counsel if they are indigent and provide a form for the purpose of determining eligibility for appointment of counsel. If the child is not released by intake, then a Detention Hearing shall be held not later than the second working day after the child is taken into custody unless the child is detained on a Friday, Saturday or listed holiday in which case the detention hearing shall be held on the first working day after the child is taken into custody.
- B. Prior to the detention hearing the court shall inform the parties of the child's right to remain silent as to the alleged conduct.
- C. All juveniles shall be represented by counsel at each detention hearing. If a parent/custodian has not retained an attorney to represent a juvenile at a detention hearing, the court appointed attorney for that day's hearings shall represent the juvenile at the detention hearing.
- C. The detention hearing may be conducted without the presence of the child's parent(s) or other responsible adult(s), however, in these cases the court must immediately appoint counsel or a guardian ad litem to represent the child.
- D. The court shall provide the attorney for the child access to all written matter to be considered by the Court in making the detention decision.

Indigence Determination Standards

12/1/2009

Definitions:

A. "Total income" In the case of a juvenile, the income of the child's parents or other person determined responsible for the support of the child shall be considered. Total income shall include wages, salaries, tips, taxable interest, dividends, capital gains, business income, IRA distributions, pensions and annuities, rental real estate, royalties, partnerships, S corporations, trusts, etc., farm income unemployment compensation, Social Security benefits, and other income. Unless there has been a substantial change in income, total income will be determined from line 22 of the most recent U.S. Individual Income Tax return - 1040 or line 4 of the form 1040EZ. The income of the parent(s) or guardian who claimed the juvenile as a dependent on their most recent tax return shall be the primary source for determining income.

B. "Household size" shall be determined by the number of dependents claimed on the most recent U.S. Individual Income Tax Return 1040 or 1040EZ. If a U.S. Individual Income Tax Return has not been

filed, the household size shall mean all individuals who are dependent on the child's parent(s) for financial support.

C. "Liquid assets" shall include but are not limited to cash, savings, checking accounts, stocks, bonds, certificates of deposit, and equity in real and personal property that can be readily converted to cash, other than assets and property exempt from attachment under state law.

Financial Considerations

The financial considerations set forth below shall be used to determine whether a juvenile is indigent and shall be applied equally to each juvenile in the county. The total income of the juvenile, child's parent(s) or other person responsible for the support of the child shall be used to determine whether the juvenile qualifies as indigent.

A juvenile who is determined by the Court to be indigent is presumed to remain indigent for the remainder of the proceedings unless a material change in financial circumstances occurs. The juvenile, juvenile's attorney or State may move for reconsideration of an indigency determination.

A juvenile is considered indigent if:

A. their total income does not exceed 125% of the Federal Poverty Guidelines established and revised annually by the U.S. Department of Health and Human Services and published in the Federal Register; or

B. the juvenile and the juvenile's parent(s) were not required by law to file the most recent U.S. Individual Income Tax return, either 1040 or 1040EZ) due to gross income below the filing requirements; and

C. the juvenile and the juvenile's parent(s) liquid assets do not exceed \$2,500.00; or

D. the juvenile and the juvenile's parent(s) liquid assets do not exceed double the estimated cost of obtaining competent private legal representation on the offense(s) with which the juvenile is charged; or

E. at the time of requesting appointed counsel, the juvenile or the parent(s) of the juvenile have been determined to be eligible to receive Food Stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Social Security Income, public housing or Collin County Indigent Health Care.

Factors Not to be Considered

A. A juvenile's posting of bail or ability to post bail may not be considered, except as provided by law, in determining whether the juvenile is indigent. Even when a juvenile has posted bail, the juvenile's financial circumstances are measured by the financial standards stated in this rule.

B. The resources available to friends and families or relatives of the juvenile may not be considered in determining whether the juvenile is indigent. Only the juvenile's financial circumstances as measured by the financial standards stated in this rule shall be used as the basis for determining indigence.

C. A juvenile shall not be denied the appointment of counsel merely because the person is employed.

Partial Indigency

A. The Court may find a juvenile to be partially indigent if the person is able to pay some part of the cost of legal representation and if the payment does not imposed manifest hardship on the juvenile or the juvenile's household.

B. The family of an accused juvenile found to be partially indigent may be ordered by the Court to pay, while the case is pending, monthly installments commensurate with their ability to pay based upon the family's income and assets.

Reimbursement

A juvenile who is ordered adjudicated and has exhausted all appeals, and his parents, shall be required to reimburse Collin County a sum not more than the amount paid by the County to the juvenile's attorney, provided that a finding is made at the time of disposition that the juvenile and his/her parents have the ability to reimburse the County without substantial financial hardship. Such reimbursement shall be taxed as costs in the juvenile's case.

Form Required for Indigency

A juvenile, parent, or person responsible for the support of the child, who requests a determination of indigency and appointment of counsel shall:

A. complete under oath a questionnaire concerning financial resources, or

B. respond under oath regarding financial resources, or

C. complete the questionnaire and respond to examination.

Minimum Attorney Qualifications

12/1/2009

Procedure for the Fair Allocation of Attorneys

The Juvenile Board will receive written applications for court appointed attorneys and meet periodically to approve and update the list. The list shall be provided to all district judges, county judges, referees and clerks. Appointments are to be allocated among qualified attorneys in a manner that is fair, neutral and nondiscriminatory. The Court shall appoint attorneys from the next five names on the appointment list in the order in which the attorneys' names appear on the list, unless the Court makes a finding of good cause on the record. An attorney who is not appointment in the order in which the attorney's name appears on the list shall remain next in order on the list.

Minimum Standards for Court Appointed Attorneys

The minimum standards for placement on the list of qualified attorneys shall:

1. Be licensed and in good standing with the State Bar of Texas;
2. Exhibit proficiency, professionalism and reliability;
3. Maintain an office in Collin County, a telephone number, fax number and email access, and agree to update the District Clerk promptly of any changes; and
4. Complete ten hours average per year of CLE in criminal law, with six of those hours in juvenile law.

Graduated Lists

Applications will be received for, and lists approved for, the following graduated lists. Each list details the qualifications required for placement on the list:

A. Level One: Qualifications for Appointment for Conduct Indicating a Need for Supervision (CINS) and Delinquent Conduct and Commitment to the Texas Youth Commission is not an Authorized Disposition

1. An attorney must have been licensed to practice law for a minimum of six months, meet the Minimum Standards for Court Appointed Attorneys set out above, and
2. That attorney shall have observed at least three stipulated juvenile adjudications, three contested juvenile adjudications, three juvenile dispositions and five detention hearings.

B. Level Two: Qualifications for Appointments for Delinquent Conduct and Commitment to the Texas Youth Commission without a Determinate Sentence is an Authorized Disposition

1. An attorney must have been licensed to practice law for a minimum of one year, meet the Minimum Standards for Court Appointed Attorneys set out above, and
2. That attorney must have substantial and active participation in one juvenile or criminal (class B misdemeanor or above) contested trial and ten juvenile adjudications or modifications, contested or uncontested, or ten criminal pleas, or a combination of these totaling ten proceedings, or
3. That attorney must be Board Certified in Juvenile Law or Criminal Law.

C. Level Three: Qualifications for Appointments for Determinate Sentencing or Certification Proceedings

1. An attorney must have been licensed to practice law for a minimum of three years, meet the Minimum Standards for Court Appointment Attorneys set out above, and
2. That attorney must have substantial and active participation in two felony jury trials, juvenile or criminal, and must have been lead counsel in one county or district level jury trial, or
3. That attorney must be Board Certified in Juvenile Law or Criminal Law.

Annual Renewal and Review of Counsel

Each year appointed court appointed counsel shall complete and file a renewal application which verifies their contact and other required information. Counsel shall also attach a copy of the State Bar CLE compliance form as proof that he or she has completed the annual CLE requirements in this plan. The renewal application shall be filed with the Indigent Defense Office by December 31 of each year.

Prompt Appointment of Counsel

12/1/2009

The Collin County Juvenile Board designates all district and county judges, and designated court referees, within Collin County to appoint counsel for indigent children within the guidelines set forth below.

Appointment of Counsel for Children in Custody

A. If a juvenile is detained and has established indigency, the Court shall appoint an attorney to represent the juvenile until disposition of the allegations against him/her. Forms to request a court appointed attorney shall be provided to the juvenile or the juvenile's parents upon request. By 4:00 p.m. on the day following the appointment, the juvenile clerk shall notify by email or fax the attorney of the appointment and that the juvenile is in detention.

B. If a juvenile is detained and indigency is not established, the Court shall advise the parent/custodian to retain an attorney immediately. The parents shall notify the probation officer by 4:00 p.m. on the following working day of the name of the juvenile's attorney. If the parents have not retained an attorney by 4:00 p.m. of the next working day following the initial detention hearing, the probation officer shall submit a request for appointment of counsel for the detained juvenile pending an indigency/show cause hearing.

C. If a juvenile is released at or prior to the detention hearing, the probation officer shall inform the juvenile and the juvenile's parents of the right to request a court appointed attorney and shall provide forms to request a court appointed attorney to the juvenile's parents.

Appointment of Counsel for Children Out of Custody

A. The Court, upon making a finding of indigency, shall appoint an attorney on or before the fifth working day after the date a petition for adjudication of discretionary transfer has been served on the child. By 4:00 p.m. on the day following the appointment, the juvenile clerk shall notify by email or fax the attorney of the appointment and the next court date.

B. The Court, upon making a finding of indigency, shall appoint an attorney on or before the fifth working day after the motion to modify disposition seeking commitment to TYC or placing in secure correctional facility has been filed. By 4:00 p.m. on the day following the appointment, the juvenile clerk shall notify by email or fax the attorney of the appointment and the next court date.

C. The Juvenile Board shall adopt the computerized attorney listing system developed in conjunction with Information Services Department and direct that all appointments shall be made from the list as published by the Information Technology Department on the AS400. If the AS400 computer system is inoperable for any reason, the appointing judge or magistrate shall appoint an attorney from the written list of approved attorneys.

Attorney Selection Process

12/1/2009

Procedures for the Fair Allocation of Attorneys

The Court Appointment List shall be provided to all district judges, county judges, referees and clerks. Appointments are to be allocated among qualified attorneys in a manner that is fair, neutral and nondiscriminatory. The Court shall appoint attorneys from the next five names on the appointment list in the order in which the attorneys' names appear on the list, unless the Court makes a finding of good cause on the record. An attorney who is not appointed in the order in which the attorney's name appears on the list shall remain next in order on the list.

Distribution of Cases

A. An attorney may receive an appointment for the highest level of offense for which he or she is qualified and for each lower level of offense. New attorneys will be added to the end of the list as it exists at the time they are added.

B. The Court may replace an attorney from appointment on a case or remove an attorney from the Court Appointment List who fails to contact a detained juvenile on the first working day after the date of appointment, or fails to interview a juvenile who is not being detained as soon as practicable, or for good cause shown on the record.

C. Qualified attorneys will be assigned detention hearings in the same manner as described in the Graduated Lists, under Minimum Attorney Qualifications.

Removal and Review of Counsel

Any judge member of the Juvenile Board may immediately remove from the Court Appointment List any attorney who intentionally or repeatedly fails to fulfill their obligations to their client or the Court. Upon such event, the board of judges shall review the matter at its next scheduled meeting. Unless a majority of the board of judges votes in favor of restoring the attorney's name the attorney's name shall not be restored to the Court Appointment List.

Fee and Expense Payment Process

12/1/2009

The juvenile board adopts the following fee schedule for appointed attorneys:

A minimum of \$75 an hour and a maximum of \$125 an hour, or a total fixed fee as set forth below:

A. Detention hearings: \$100.00

B. Motion hearings (e.g., Chapter 55): \$300.00

C. Misdemeanors, CINS or uncontested dispositions: \$500.00 (\$200.00 for second and each subsequent case at the discretion of the Judge)

D. Contested dispositions: \$750.00

E. Case which results in a trial: \$375.00 per half day, plus up to \$1,000 pretrial

F. Appeals: \$3,500.00, except for Anders briefs and complicated appeals, as determined by the Judge

The Court may vary from these guidelines in unusual circumstances or where the fee would be manifestly inappropriate because of the circumstances beyond the control of the appointed counsel.

Procedure With Prior Court Approval:

Appointed counsel may file with the trial court a pretrial *ex parte* confidential request for advance payment of investigative and expert expenses. The request for expenses must state as applicable:

A. the type of investigation to be conducted or the type of expert to be retained;

B. specific facts that suggest the investigation will result in admissible evidence or that the services of an expert are reasonably necessary to assist in the preparation of a potential defense; and

C. an itemized list of anticipated expenses for each investigation or each expert.

The Court shall grant the request for advance payment of expenses in whole or in part if the request is reasonable. If the Court denies in whole or in part the request for expenses, the Court shall:

A. state the reasons for the denial in writing;

B. attach the denial to the confidential request; and

C. submit the request and denial as a sealed exhibit to the record.

Procedure Without Court Approval:

Appointed counsel may incur investigative or expert expenses without prior approval of the Court. On presentation of a claim for reimbursement, the Court shall order reimbursement of counsel for the expenses, if the expenses are reasonably necessary and reasonably incurred. Unreasonable or unnecessary expenses will not be approved.

Articles 26.05(d), 26.052(f), (g), and (h), Code of Criminal Procedure

Payment Request Form

Counsel shall submit their requests for payment on the approved Payment Request Form.

Miscellaneous

12/1/2009

This plan is subject to amendments.

Plan Documents

Collin Juvenile Board Affidavit of Indigence.doc (12/8/2009 9:47:06 AM) [view](#)

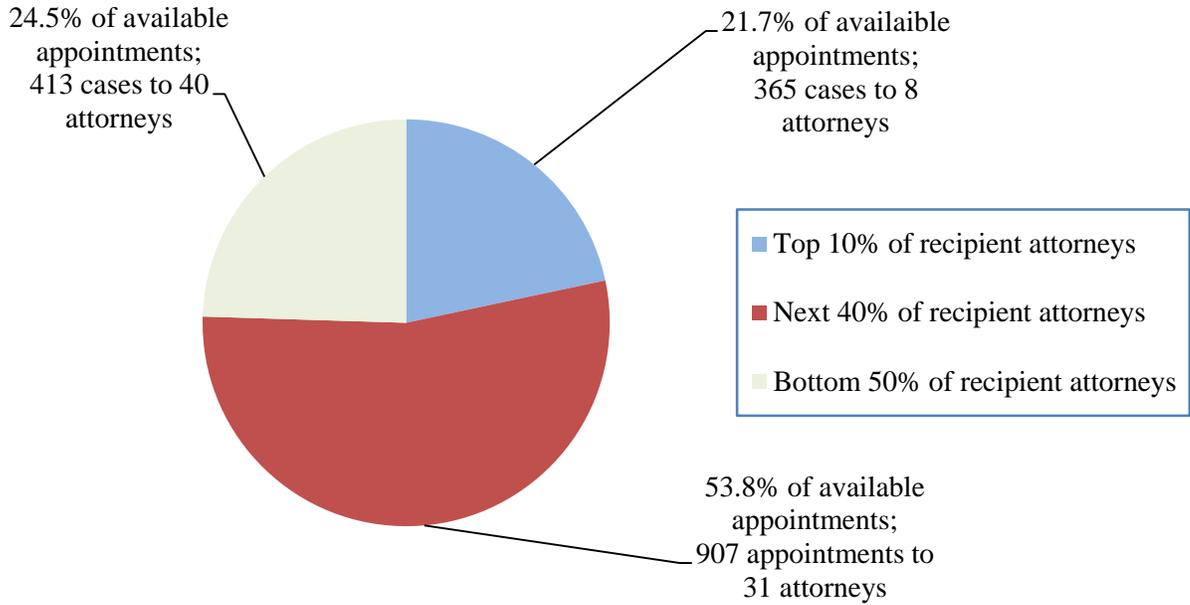
Collin Juvenile Board Attorney Application for Appointment.pdf (12/8/2009 9:42:30 AM) [view](#)

Collin Juvenile Board Attorney Fee Schedule.doc (8/10/2010 1:33:24 PM) [view](#)

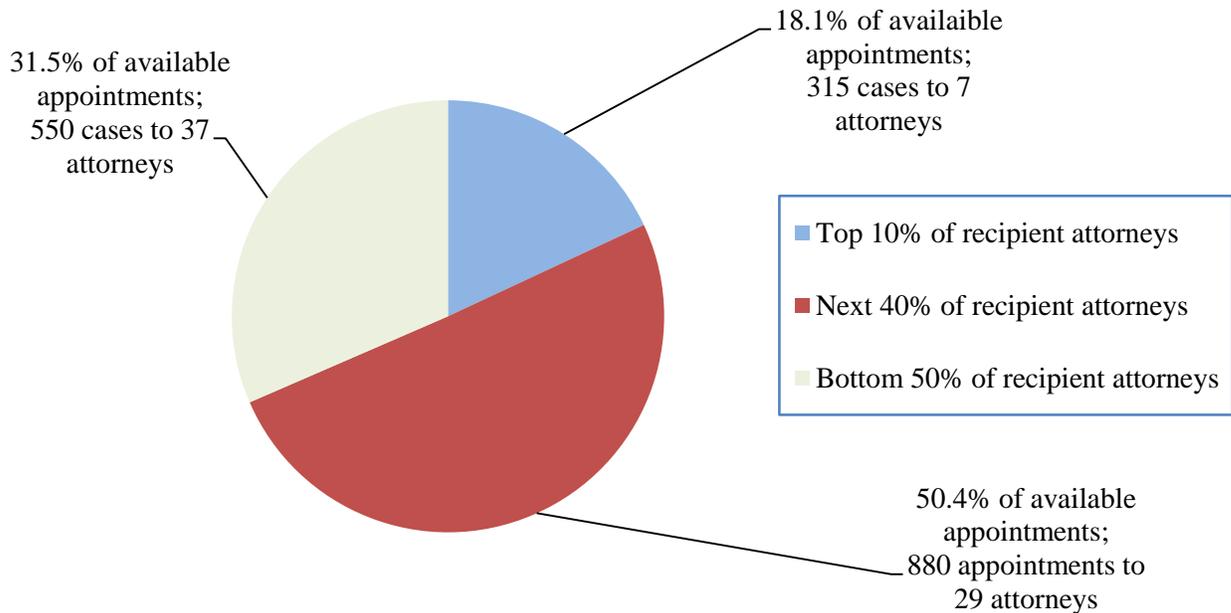
Collin Juvenile Board Attorney Fee Voucher.pdf (12/8/2009 9:42:54 AM) [view](#)

Appendix D – Distribution of Attorney Appointments in Felony, Misdemeanor, and Juvenile Cases / List of Auditor Payee Names Matched with Attorney List Names

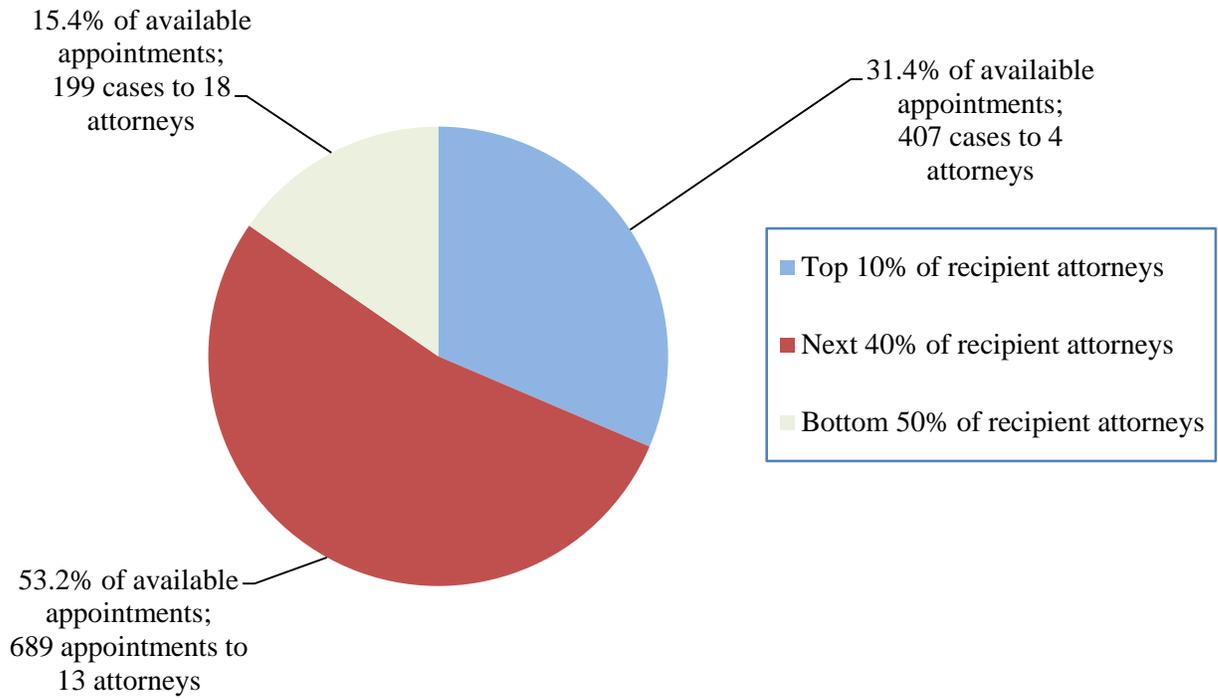
Distribution of Attorney Appointments in Felony Cases



Distribution of Attorney Appointments in Misdemeanor Cases



Distribution of Attorney Appointments in Juvenile Cases



Attorney List Names and Corresponding Auditor Record Names

See below for a table showing attorney list names and the corresponding auditor record name used in determining distributions of attorney appointments. If no auditor record name is listed for a given attorney list name, the monitor did not find any cases paid from the respective attorney. It is quite possible that some of the attorney names should have been matched with a different auditor record name.

| <u>Attorney</u> | <u>Felony Lists</u> | <u>Misdemeanor List</u> | <u>2010 Juvenile List</u> | <u>2011 Juvenile List</u> | <u>Auditor Record Name</u> | <u>Auditor Record Name 2</u> |
|--------------------------|---|-------------------------|---------------------------|---------------------------|----------------------------|---------------------------------------|
| Adams, Glenn | 3F; Cert; Motn | x | | | | |
| Adams, Sheryl | 3F; APPL; MOTN | x | x | x | ADAMS, L SHERYL | |
| Alexander, Sindhu | 12F; 3F; Cert; Motn | | | | | |
| Alvarado, Danette | 3F; SPAN; Cert; MOTN; ANCW | x | x | x | ALVARADO, DANETTE PC | |
| Anderson, Gary | | | x | x | ANDERSON, GARY A | |
| Andor, Joshua | APPL; MOTN | x | | | ANDOR, JOSHUA F | |
| Angelino, James Scott | 3F; MOTN | x | | | ANGELINO, JAMES S | |
| Argentieri, Matthew | 12F; 3F; MOTN; ANCW | | | | ARGENTIERI, MATTHEW C | |
| Arias, Karen | 3F; SPAN; MOTN | x | | | | |
| Avery, Tim | 12F; 3F; APPL; MOTN; ANCW | x | x | x | AVERY, TIMOTHY WILLIAM | |
| Ayers, Allen | APPL; MOTN | x | | | | |
| Baker, Russ A | 3F; APPL; MOTN | x | | | BAKER, RUSS | LUCE, NORDHAUS AND WALPOLE PLLC |
| Barbieri, Heather | 12F; 3F; APPL; CERT; CMUR; MOTN; CAPT; ANCW | x | | | BARBIERI, HEATHER JEAN | |
| Barlow, W Craig | 12F; 3F; MOTN | x | | | BARLOW, W CRAIG | |
| Belden, Micah | CERT; CMUR; ANCW | | | | BELDEN, MICAH PC | |
| Benko, Debbie | | | x | x | BENKO, DEBBIE R | |
| Berry, Doris | 3F; MOTN; ANCW | x | | x | BERRY, DORIS E | |

| <u>Attorney</u> | <u>Felony Lists</u> | <u>Misdemeanor List</u> | <u>2010 Juvenile List</u> | <u>2011 Juvenile List</u> | <u>Auditor Record Name</u> | <u>Record Name 2</u> |
|---------------------|----------------------|-------------------------|---------------------------|---------------------------|-----------------------------|--------------------------------|
| Biederman, Hunter | APPL; ANCW | | | | | |
| Blackmon, Howard | 12F; 3F | | | | | |
| Brandt, Lydia | CAPT; ANCW | | | | | |
| Brown, Eli | 12F; 3F | | | | BROWN, ELIJAH | |
| Burleson, Troy | | x | | | | |
| Cain, Lauren | | x | | | CAIN, LAUREN H | |
| Castleman, Jennifer | 3F; APPL; MOTN; ANCW | x | | | | |
| Ceder, Carl | 3F; MOTN | x | | | CEDER, CARL | |
| Chambers, Samantha | 3F; MOTN | x | | | | |
| Chatman, Charles | 12F; 3F | | | | CHATMAN, CHARLES E | |
| Chesley, Karen | 12F; 3F; APPL; MOTN | x | | | | |
| Cooper, John | 12F; 3F; MOTN | | x | x | COOPER, JOHN MORRISON | |
| Crowder, Darlina | 12F; 3F; Span; MOTN | x | | | | |
| Crowson, Kelly | 12F; 3F; MOTN | x | | | | |
| Curran, Michael D | 12F; 3F; SPAN; MOTN | x | | | | |
| Curtis, Sharon W | | x | | | | |
| Damore, Angela | 3F; ANCW | | | | D'AMORE, ANGELA | |
| Damore, Tom | 12F; 3F; CMUR; MOTN | | | | D'AMORE, THOMAS A | |
| Daniel, Terri | 12F; 3F; CERT; MOTN | x | x | x | DANIEL & HARRISON PLLC | DANIEL, TUCKER & HARRISON PLLC |
| Davis, Casey Easley | 3F; MOTN | | | | DAVIS, CASEY | |
| De La Garza, Rafael | 12F; SPAN | | | | DE LA GARZA LAW FIRM PC | |
| Dement, Michael | MOTN | x | | | DEMENT ROACH AND STERN PLLC | |
| Diaz, Michael G | 12F; 3F; MOTN | x | | | DIAZ, MICHAEL G | |
| Dodd, Jacqueline | MOTN | x | | | | |
| Duke, Brock | 12F; 3F; MOTN | x | | | DUKE, BROCK H | |

| <u>Attorney</u> | <u>Felony Lists</u> | <u>Misdemeanor List</u> | <u>2010 Juvenile List</u> | <u>2011 Juvenile List</u> | <u>Auditor Record Name</u> | <u>Record Name 2</u> |
|----------------------|----------------------------|-------------------------|---------------------------|---------------------------|---------------------------------|----------------------|
| Edgett, Scott | MOTN | x | | | EDGETT LAW FIRM, PC THE | |
| Edwards, Shannon | 3F; APPL; MOTN; ANCW | x | | | EDWARDS, SHANNON | |
| Ewing, Laurie | 3F; MOTN | x | x | x | EWING, LAURIE | |
| Farkas, Andrew | 12F; 3F; MOTN | x | | | FARKAS, ANDREW L PC | |
| Fitts, Kara | 3F; APPL; MOTN; ANCW | x | x | x | FITTS AND CASTLEMAN | |
| Floyd, Douglas | 12F; 3F; MOTN | x | | | FLOYD, DOUGLAS T | |
| Franklin, Richard | 12F; CMUR | | | | FRANKLIN, RICHARD K | |
| Fratter, Marc | 12F; 3F; APPL; MOTN; ANCW | x | x | x | FRATTER, MARC J | |
| Gallagher, Matthew | 12F; 3F; MOTN | | | | | |
| Galvan, John | | x | | | | |
| Garner, Lon | 12F; 3F; MOTN | x | | | GARNER FIRM PC | |
| Gibbs, Gregg | | | | | | |
| Giles, George | | x | | | GILES, GEORGE A | |
| Goeller, J Matthew | 3F; APPL; CERT; MOTN; ANCW | x | x | x | GOELLER, J MATTHEW | GRUBBS & GOELLER |
| Goheen, Matthew J | 3F; APPL; MOTN | x | | | GOHEEN, MATTHEW J | |
| Gonzalez, Manuel | 3F; MOTN | x | | | | |
| Gore, Cynthia Porter | CERT | x | | | | |
| Gore, Keith | CMUR | | | | | |
| Graham, Christopher | 12F; 3F; MOTN; FREN | | | | LAUREN GRAHAM & ASSOCIATES PLLC | |
| Greco, Joseph | MOTN | x | | | GRECO, JOSEPH | |
| Greeves, Spencer | MOTN | x | | | GREEVES, SPENCER C | |
| Hawk, Michael | 12F; 3F; MOTN | | | | HAWK, PHILLIP MICHAEL | |

| <u>Attorney</u> | <u>Felony Lists</u> | <u>Misdemeanor List</u> | <u>2010 Juvenile List</u> | <u>2011 Juvenile List</u> | <u>Auditor Record Name</u> | <u>Record Name 2</u> |
|---------------------------|---|-------------------------|---------------------------|---------------------------|----------------------------|----------------------|
| Hayes, Lia | | | x | | HAYES, LIA | |
| Haynes, David K | 12F; 3F; APPL; CERT; MOTN; GERM | x | | | HAYNES, DAVID K | |
| Haynes, Roger | 12F; 3F; CMUR; MOTN | | | | HAYNES, ROGER E | |
| Haywood, Katheryn | 12F; 3F; MOTN | | | | HAYWOOD, KATHERYN HEATHER | |
| Healey, Erin | APPL; ANCW | | | | | |
| Hedlund, Dawn | 12F; 3F; MOTN | x | | | | |
| Heidenheimer, Mark | ANCW | | | | | |
| Herrington, Robert | APPL; SPAN; CERT | x | | | HERRINGTON, ROBERT J | |
| Hill, Carolyn | | | x | x | HILL, CAROLYN A | |
| Hoover, Donald | 12F; 3F; MOTN | | | | | |
| Hoy, Natasha | | | x | x | HOY, NATASHA | ATTY AT LAW |
| Hudson, Stephanie Duecker | 12F; 3F; MOTN; ANCW | x | | | | |
| Hughes, Carlton | 12F; 3F; MOTN; ANCW | | | | HUGHES, CARLTON | |
| Hultkrantz, Robert | 12F; 3F; APPL; ANCW | x | x | x | HULTKRANTZ, ROBERT O | |
| Ismail, Shawn | 3F; APPL; PORT; MOTN; ANCW; GERM; GUJU; HIND; IBO | x | | | ISMAIL, SHAHID S | |
| Jackson, Jeffrey | MOTN | x | x | x | JACKSON, JEFFREY | |
| Johnson, Wm Randall | 3F; APPL; MOTN; ANCW | x | | | | |
| Kalabus, Bo | APPL; MOTN | x | | | ROSENTHAL & WADAS PLLC | |
| Kennedy, Nancy | CERT; MOTN; ANCW | | | | KENNEDY, NANCY | |
| Kim, Yoon | 12F; 3F; MOTN; KORE | x | x | x | KIM, YOON | |
| King, Edwin V | 12F; 3F; CERT; CMUR | | | | KING, EDWIN V | |
| Kleckner, David | 12F; 3F; CERT; MOTN | x | x | x | KLECKNER, DAVID MARION | |
| Knapp, Gary | 3F; MOTN | x | | x | ALBIN HARRISON ROACH PLLC | |

| <u>Attorney</u> | <u>Felony Lists</u> | <u>Misdemeanor List</u> | <u>2010 Juvenile List</u> | <u>2011 Juvenile List</u> | <u>Auditor Record Name</u> | <u>Record Name 2</u> |
|---------------------|---------------------------------|-------------------------|---------------------------|---------------------------|----------------------------|----------------------|
| Kreck, Ryan | 12F; 3F; MOTN | | | | KRECK, RYAN | |
| Lakatos, Pamela | 12F; 3F; APPL; CERT; MOTN; ANCW | x | | | LAKATOS, PAMELA J | |
| Larrea, F B | 12F; 3F; MOTN | | | | LARREA, F B | |
| Laws, Chase P | MOTN | x | | | | |
| Lazarus, Adam | | x | | | LAZARUS, ADAM | |
| Ledbetter, Mark D | 3F; MOTN | x | | | | |
| Leyko, Martin | | | x | x | LEYKO, MARTIN M | |
| Linder, Phillip | 12F; 3F; CMUR; MOTN | | | | | |
| Lopez III, John | | | | x | LOPEZ, JOHN III | |
| Lopez-Carr, Debbie | 12F; 3F; APPL; MOTN; ANCW | x | | | LOPEZ-CARR, DEBBIE | |
| Lugo, Michelle | | | | x | LUGO, CHRISTINE | |
| Maddox, Matthew | 3F; APPL; MOTN | x | | | | |
| Maldonado, Art | 3F; SPAN | | | | | |
| Mayer, Kimberly | 3F; MOTN | | | | | |
| McClung, Robbie | 12F; CMUR | | | | MCCLUNG, ROBBIE | |
| McCraw, Piper | 3F; APPL; MOTN; ANCW | x | x | x | MCCRAW, PIPER P.C. | |
| McDaniel, Danny | 3F; APPL; MOTN | x | x | x | MCDANIEL, DANNY R | |
| McDermitt, Donald R | 12F; 3F; MOTN | x | x | x | MCDERMITT, DONALD R | |
| Meredith, Randall | | | x | x | MEREDITH, RANDALL LEWIS | |
| Meskunas, John | | | x | x | MESKUNAS, JOHN E | |
| Miears, Steven R | CMUR; ANCW | | | | MIEARS, STEVEN R PC | |
| Miller, Meghan | 3F; MOTN | x | x | x | MILLER, MEGHAN E | |

| <u>Attorney</u> | <u>Felony Lists</u> | <u>Misdemeanor List</u> | <u>2010 Juvenile List</u> | <u>2011 Juvenile List</u> | <u>Auditor Record Name</u> | <u>Record Name 2</u> |
|--------------------|---------------------------------------|-------------------------|---------------------------|---------------------------|----------------------------|----------------------|
| Miller, Stephen H | 3F; CMUR; MOTN | x | | x | MILLER, STEPHEN H | |
| Miranda, Claire | | | x | | MIRANDA & MILLER PC | |
| Moltz, Zan | 3F; MOTN | x | | | MOLTZ, ZAN ATTORNEY AT LAW | |
| Morris, Mac | MOTN | x | | | | |
| Nahas, Cynthia | 12F; 3F; MOTN | x | | | | |
| Nix, John | 12F; 3F; Span; MOTN | | | | NIX, JOHN HOUSTON PC | |
| Nolte, Mitchell | 12F; 3F; APPL; CERT; CMUR; MOTN; ANCW | x | x | x | NOLTE, MITCH | |
| O'Brien, Kristen | 3F; MOTN | | | | TINAJERO, KRISTEN O'BRIEN | |
| Patton, Bruce | 12F; 3F | | | | | |
| Perales, Donny | 12F; 3F; APPL; MOTN; | x | x | x | CHESLEY & PERALES PC | |
| Perkins, J Daniel | APPL; MOTN | x | | | PERKINS, J DANIEL | |
| Petrazio, Joel | 3F | x | | | | |
| Peveto, Andrew | MOTN | x | | x | PEVETO, ANDREW | LAW OFFICES OF |
| Price, Waren | 12F; 3F; MOTN | x | x | x | PRICE, WAREN C | |
| Pruitt, Lindsey | 3F; MOTN | | | | | |
| Ramage, Sharon | ANCW | | | | | |
| Reeves, Roy | 12F; 3F; APPL; MOTN; ANCW | x | | | REEVES LAW FIRM PC | |
| Richardson, Paul | | x | | | RICHARDSON, PAUL | |
| Richter, Jeff | 12F; 3F; MOTN | x | | x | RICHTER, JEFF | |
| Rodgers, Michael | 12F; 3F; MOTN | | | | RODGERS, MICHAEL H | |
| Rose, Dale | MOTN | x | | | ROSE, DALE R | |
| Rosemergy, James | 12F; 3F | | | | ROSEMERGY, JAMES PAUL | |
| Rosenstein, Samuel | 12F; 3F; APPL; MOTN; ANCW | x | x | x | ROSENSTEIN, SAMUEL D PC | |

| <u>Attorney</u> | <u>Felony Lists</u> | <u>Misdemeanor List</u> | <u>2010 Juvenile List</u> | <u>2011 Juvenile List</u> | <u>Auditor Record Name</u> | <u>Record Name 2</u> |
|--------------------|---|-------------------------|---------------------------|---------------------------|----------------------------|----------------------|
| Rosenthal, Jerermy | 3F; APPL; MOTN; ANCW | x | | | ROSENTHAL, JEREMY | |
| Routt, Christopher | APPL; MOTN | x | | | | |
| Rowlett, William | 12F; 3F; MOTN | x | x | x | ROWLETT, WILLIAM D | |
| Salas, Lee | | | | | | |
| Saldana, Rebecca | SPAN; MOTN | x | | | | |
| Scanlon, Mary | 3F; APPL; MOTN; ANCW | x | | x | SCANLON, MARY ALICE | |
| Schultz, William | 12F; 3F; MOTN; ANCW; FREN; APPL; CERT | x | x | x | SCHULTZ, WILLIAM L | |
| Sera, Gene | 3F; MOTN | x | | | | |
| Shaw, Kyle | 3F; MOTN | x | | | SHAW, KYLE K | |
| Sims, Ervette | | | x | x | SIMS, ERVETTE P | |
| Stapleton, Jered | 3F; MOTN | x | | | STAPLETON, JERED G | |
| Steward, Jose | 12F; 3F; SPAN; MOTN | x | | | STEWART, JOSE A | |
| Stith, William | | | x | x | STITH, WILLIAM J | |
| Stovall, Bill | 12F; 3F; SPAN | | | | STOVALL, BILLY JACK II | |
| Stroud, Hannah | APPL; MOTN | x | | | PHILIPS & EPPERSON ATTY LP | |
| Sylvan, Coleman | 12F; 3F; MOTN | x | | | | |
| Taggart, Alan | APPL; CERT; MOTN | x | | | TAGGART, ALAN K | |
| Tatum, John | 12F; CMUR; CAPT | | | | TATUM, JOHN | |
| Taylor, EE Trey | 12F; 3F; MOTN; ANCW | | | | TAYLOR, EUGENE EDWARD III | |
| Therrian, Kyle | MOTN | x | | | | |
| Tidwell, Jerry | | x | | | TIDWELL, JERRY | |
| Tu, Maria | 3F; APPL; MOTN; MACH | x | x | x | TU, MARIA | |

| <u>Attorney</u> | <u>Felony Lists</u> | <u>Misdemeanor List</u> | <u>2010 Juvenile List</u> | <u>2011 Juvenile List</u> | <u>Auditor Record Name</u> | <u>Record Name 2</u> |
|----------------------|---------------------------------------|-------------------------|---------------------------|---------------------------|----------------------------|-------------------------------------|
| Tucker, Angela | | | x | x | TUCKER, ANGELA M., PC | |
| Underwood, Brandi | APPL; MOTN | x | | | THE RACHEL FIRM, PLLC | |
| Underwood, William | 3F; APPL; MOTN | x | | | | |
| Van Dyke, Jason | 3F; MOTN | | | | VAN DYKE, JASON LEE | |
| Vaughan, Cheryl | | | x | x | VAUGHAN, CHERYL | |
| Vitz, William | MOTN | x | | | | |
| Voyles, Bradley | 3F; MOTN; GERM | x | | | VOYLES, BRADLEY | |
| Wadas, Derk | APPL; ANCW | x | | | WADAS, DERK | |
| Waddill, David | 12F; 3F; CERT; MOTN | x | | | WADDILL SKINNER LLP | |
| Walker, Troy | 12F; 3F; APPL; CMUR; MOTN; CAPT; ANCW | x | | | WALKER, BARNETT | |
| Weaver, Richard | 12F; 3F; MOTN | | | | | |
| Whalen, James | 12F; 3F; APPL; MOTN; ANCW | x | | x | WHALEN, JAMES P | |
| Williams, Jacqueline | | | x | x | WILLIAMS, JACQUELINE B | |
| Willingham, Taylor | APPL; MOTN | x | | | WILLINGHAM, TAYLOR P | LAW OFFICES OF TAYLOR WILLINGHAM PC |
| Zende Del, Jason | 3F; MOTN | | | | ZENDEH DEL LAW FIRM, PLLC | |

Appendix E – Appointed Attorney Caseloads for FY2011

| <u>Attorney Name (as listed in auditor records)</u> | <u>Felony Cases</u> | <u>Misdemeanor cases</u> | <u>Juvenile Cases</u> | <u>Appeal Cases</u> | <u>NAC caseload</u> |
|---|---------------------|--------------------------|-----------------------|---------------------|---------------------|
| ADAMS, L SHERYL | 2 | 19 | 7 | 0 | 0.1 |
| ALBIN HARRISON ROACH PLLC | 28 | 46 | 65 | 0 | 0.6 |
| ALEXANDER & WINDLEY | 0 | 0 | 3 | 0 | 0.0 |
| ALLEN, JESSIE R | 7 | 19 | 0 | 1 | 0.1 |
| ALVARADO, DANETTE PC | 13 | 31 | 49 | 0 | 0.4 |
| ANAKWUE, CORDELIA J | 0 | 30 | 0 | 0 | 0.1 |
| ANDERSON, GARY A | 0 | 25 | 5 | 0 | 0.1 |
| ANDOR, JOSHUA F | 6 | 49 | 1 | 1 | 0.2 |
| ANGELINO, JAMES S | 0 | 16 | 0 | 0 | 0.0 |
| ARGENTIERI, MATTHEW C | 15 | 8 | 0 | 0 | 0.1 |
| AVERY, TIMOTHY WILLIAM | 23 | 28 | 5 | 2 | 0.3 |
| BAKER, RUSS | 0 | 1 | 0 | 0 | 0.0 |
| BARBIERI, HEATHER JEAN | 11 | 16 | 0 | 2 | 0.2 |
| BARLOW, W CRAIG | 25 | 18 | 0 | 0 | 0.2 |
| BAXTER, LANCE | 3 | 3 | 0 | 0 | 0.0 |
| BELDEN, MICAH PC | 9 | 1 | 0 | 0 | 0.1 |
| BELL, BRANDON | 0 | 5 | 0 | 0 | 0.0 |
| BENKO, DEBBIE R | 0 | 0 | 17 | 0 | 0.1 |
| BERRY, DORIS E | 0 | 4 | 4 | 0 | 0.0 |
| BRAGG, J MARK | 9 | 11 | 0 | 0 | 0.1 |
| BRONCHETTI, LISA | 15 | 21 | 0 | 0 | 0.2 |
| BROWN, ELIJAH | 0 | 9 | 0 | 0 | 0.0 |
| CAIN, LAUREN H | 1 | 31 | 0 | 0 | 0.1 |
| CEDER, CARL | 18 | 4 | 0 | 1 | 0.2 |
| CHATMAN, CHARLES E | 21 | 14 | 0 | 0 | 0.2 |
| CHESLEY & PERALES PC | 50 | 43 | 54 | 0 | 0.7 |
| COMPTON, KRISTI | 1 | 0 | 0 | 0 | 0.0 |
| COOPER, JOHN MORRISON | 0 | 12 | 16 | 0 | 0.1 |
| CORLEY, DANIEL C PHD | | | 0 | | 0.0 |
| D'AMORE, ANGELA | 25 | 1 | 0 | 5 | 0.4 |
| D'AMORE, THOMAS A | 27 | 0 | 0 | 0 | 0.2 |
| DANFORTH, RON W | 2 | 29 | 0 | 0 | 0.1 |
| DANIEL & HARRISON PLLC | 52 | 42 | 120 | 0 | 1.1 |
| DANIEL, TUCKER & HARRISON PLLC | 0 | 1 | 0 | 0 | 0.0 |
| DAVIS, CASEY | 14 | 22 | 0 | 0 | 0.1 |
| DE LA GARZA LAW FIRM PC | 29 | 0 | 0 | 0 | 0.2 |
| DEMENT ROACH AND STERN PLLC | 0 | 22 | 0 | 0 | 0.1 |
| DIAZ, MICHAEL G | 25 | 21 | 0 | 0 | 0.2 |
| DUKE, BROCK H | 25 | 33 | 0 | 2 | 0.3 |
| EDGEETT LAW FIRM, PC THE | 0 | 25 | 0 | 0 | 0.1 |

| <u>Attorney Name (as listed in auditor records)</u> | <u>Felony Cases</u> | <u>Misdemeanor cases</u> | <u>Juvenile Cases</u> | <u>Appeal Cases</u> | <u>NAC caseload</u> |
|---|---------------------|--------------------------|-----------------------|---------------------|---------------------|
| EDWARDS, SHANNON | 0 | 15 | 0 | 0 | 0.0 |
| EWING, LAURIE | 15 | 20 | 35 | 0 | 0.3 |
| FARKAS, ANDREW L PC | 25 | 18 | 0 | 2 | 0.3 |
| FITTS AND CASTLEMAN | 45 | 42 | 115 | 1 | 1.0 |
| FLOYD, DOUGLAS T | 16 | 25 | 0 | 4 | 0.3 |
| FLYNN, WILLIAM EUGENE | 1 | 0 | 0 | 0 | 0.0 |
| FRANKLIN, RICHARD K | 1 | 0 | 0 | 0 | 0.0 |
| FRATTER, MARC J | 29 | 30 | 1 | 10 | 0.7 |
| GANTT, BRYAN | 0 | 38 | 0 | 0 | 0.1 |
| GARNER FIRM PC | 32 | 14 | 9 | 0 | 0.3 |
| GILES, GEORGE A | 0 | 28 | 0 | 3 | 0.2 |
| GOELLER, J MATTHEW | 16 | 14 | 25 | 0 | 0.3 |
| GOHEEN, MATTHEW J | 0 | 34 | 0 | 0 | 0.1 |
| GRANT, DEANDRA MICHELLE | 27 | 2 | 0 | 0 | 0.2 |
| GRANT, RYAN M | 0 | 30 | 0 | 0 | 0.1 |
| GRASS, JEFFREY C | 0 | 1 | 0 | 0 | 0.0 |
| GRECO, JOSEPH | 0 | 25 | 0 | 0 | 0.1 |
| GREEVES, SPENCER C | 0 | 26 | 0 | 0 | 0.1 |
| GRUBBS & GOELLER | 17 | 8 | 4 | 0 | 0.2 |
| HARDIN, JOHN CHARLES | 6 | 0 | 0 | 0 | 0.0 |
| HAWK, PHILLIP MICHAEL | 33 | 10 | 0 | 0 | 0.2 |
| HAYES, LIA | 0 | 0 | 39 | 0 | 0.2 |
| HAYNES, DAVID K | 49 | 11 | 2 | 1 | 0.4 |
| HAYNES, ROGER E | 2 | 0 | 0 | 0 | 0.0 |
| HAYWOOD, KATHERYN HEATHER | 42 | 17 | 0 | 0 | 0.3 |
| HERRINGTON, ROBERT J | 10 | 36 | 0 | 0 | 0.2 |
| HILL, CAROLYN A | 0 | 0 | 41 | 0 | 0.2 |
| HOLLAND, ROBERT JOHN | 7 | 16 | 0 | 0 | 0.1 |
| HOUFEK, DENNIS F ATTORNEY | 0 | 17 | 0 | 0 | 0.0 |
| HOUSE, W B JR | 26 | 16 | 0 | 0 | 0.2 |
| HOY, NATASHA ATTY AT LAW | 0 | 0 | 3 | 0 | 0.0 |
| HUGHES, CARLTON | 21 | 18 | 0 | 0 | 0.2 |
| HULTKRANTZ, ROBERT O | 42 | 18 | 8 | 1 | 0.4 |
| ISMAIL, SHAHID S | 18 | 12 | 0 | 0 | 0.2 |
| JACKSON, JEFFREY | 1 | 34 | 5 | 0 | 0.1 |
| KELLER & STARK | 1 | 0 | 0 | 0 | 0.0 |
| KENNEDY, NANCY | 31 | 18 | 0 | 0 | 0.3 |
| KIM, YOON | 22 | 31 | 13 | 0 | 0.3 |
| KING, EDWIN V | 36 | 0 | 0 | 0 | 0.2 |
| KLECKNER, DAVID MARION | 31 | 25 | 58 | 0 | 0.6 |
| KRECK, RYAN | 0 | 5 | 0 | 0 | 0.0 |

| <u>Attorney Name (as listed in auditor records)</u> | <u>Felony Cases</u> | <u>Misdemeanor cases</u> | <u>Juvenile Cases</u> | <u>Appeal Cases</u> | <u>NAC caseload</u> |
|---|---------------------|--------------------------|-----------------------|---------------------|---------------------|
| LAFLEUR, ERIC S | 0 | 5 | 0 | 0 | 0.0 |
| LAKATOS, PAMELA J | 21 | 13 | 0 | 3 | 0.3 |
| LARREA, F B | 40 | 0 | 0 | 0 | 0.3 |
| LAUREN GRAHAM & ASSOCIATES PLLC | 11 | 12 | 0 | 0 | 0.1 |
| LAW OFFICES OF TAYLOR WILLINGHAM PC | 0 | 4 | 0 | 0 | 0.0 |
| LAZARUS, ADAM | 0 | 40 | 0 | 0 | 0.1 |
| LENTZ LAW FIRM | 0 | 1 | 0 | 0 | 0.0 |
| LEYKO, MARTIN M | 6 | 0 | 55 | 0 | 0.3 |
| LIM, DANA | 0 | 16 | 0 | 0 | 0.0 |
| LOPEZ, JOHN III | 0 | 0 | 4 | 0 | 0.0 |
| LOPEZ-CARR, DEBBIE | 2 | 0 | 0 | 0 | 0.0 |
| LUCE, NORDHAUS AND WALPOLE PLLC | 36 | 27 | 0 | 0 | 0.3 |
| LUGO, CHRISTINE | 0 | 0 | 7 | 0 | 0.0 |
| MARTIN, HARLEY K | 0 | 36 | 0 | 0 | 0.1 |
| MCCLUNG, ROBBIE | 3 | 0 | 0 | 0 | 0.0 |
| MCCRAW, PIPER P.C. | 28 | 26 | 36 | 0 | 0.4 |
| MCDANIEL, DANNY R | 7 | 21 | 34 | 0 | 0.3 |
| MCDERMITT, DONALD R | 41 | 52 | 96 | 0 | 0.9 |
| MEREDITH, RANDALL LEWIS | 0 | 25 | 4 | 0 | 0.1 |
| MESKUNAS, JOHN E | 10 | 22 | 4 | 0 | 0.1 |
| MIEARS, STEVEN R PC | 0 | 0 | 0 | 1 | 0.0 |
| MILLER, MEGHAN E | 24 | 13 | 35 | 0 | 0.4 |
| MILLER, STEPHEN H | 14 | 20 | 1 | 0 | 0.1 |
| MIRANDA & MILLER PC | 10 | 22 | 8 | 1 | 0.2 |
| MOLTZ, ZAN ATTORNEY AT LAW | 1 | 39 | 0 | 0 | 0.1 |
| NIX, JOHN HOUSTON PC | 3 | 9 | 0 | 0 | 0.0 |
| NOLTE, MITCH | 44 | 12 | 63 | 3 | 0.8 |
| NORMAN, MARCUS D | 21 | 20 | 0 | 2 | 0.3 |
| ORMOND, JOHN D | 0 | 7 | 0 | 0 | 0.0 |
| PERKINS, J DANIEL | 0 | 37 | 0 | 0 | 0.1 |
| PEVETO, ANDREW LAW OFFICES OF | 0 | 27 | 3 | 0 | 0.1 |
| PHILIPS & EPPERSON ATTY LP | 0 | 1 | 0 | 0 | 0.0 |
| PRICE, WARREN C | 18 | 11 | 5 | 0 | 0.2 |
| REEVES LAW FIRM PC | 27 | 32 | 0 | 1 | 0.3 |
| RICHARDSON, PAUL | 0 | 30 | 0 | 0 | 0.1 |
| RICHTER, JEFF | 1 | 3 | 0 | 0 | 0.0 |
| RINK, WILLIAM | 12 | 5 | 0 | 0 | 0.1 |
| ROBERTS, WILLIAM H | 14 | 17 | 0 | 0 | 0.1 |
| RODGERS, MICHAEL H | 20 | 3 | 0 | 0 | 0.1 |
| ROSE, DALE R | 0 | 15 | 0 | 0 | 0.0 |
| ROSEMERGY, JAMES PAUL | 4 | 0 | 0 | 0 | 0.0 |

| <u>Attorney Name (as listed in auditor records)</u> | <u>Felony Cases</u> | <u>Misdemeanor cases</u> | <u>Juvenile Cases</u> | <u>Appeal Cases</u> | <u>NAC caseload</u> |
|---|---------------------|--------------------------|-----------------------|---------------------|---------------------|
| ROSENSTEIN, SAMUEL D PC | 28 | 27 | 30 | 1 | 0.4 |
| ROSENTHAL & WADAS PLLC | 0 | 40 | 0 | 0 | 0.1 |
| ROSENTHAL, JEREMY | 11 | 1 | 0 | 2 | 0.2 |
| ROWLETT, WILLIAM D | 30 | 25 | 7 | 0 | 0.3 |
| SCANLON, MARY ALICE | 9 | 16 | 23 | 0 | 0.2 |
| SCHAEFER, HEATHER A | 2 | 0 | 0 | 0 | 0.0 |
| SCHULTZ, WILLIAM L | 39 | 20 | 47 | 4 | 0.7 |
| SCHUSTER, JAC | 0 | 9 | 0 | 0 | 0.0 |
| SHAW, KYLE K | 19 | 22 | 0 | 0 | 0.2 |
| SIMS, ERVETTE P | 0 | 0 | 76 | 0 | 0.4 |
| SMITH, KIMBERLY DIAN | 39 | 20 | 0 | 0 | 0.3 |
| SMITH, NICHOLAS RUSSELL | 0 | 21 | 0 | 0 | 0.1 |
| SMITH, TOM EMERSON | 0 | 33 | 0 | 0 | 0.1 |
| STAPLETON, JERED G | 3 | 27 | 0 | 0 | 0.1 |
| STEIN, SHANA | 0 | 35 | 0 | 0 | 0.1 |
| STEWART, JOSE A | 11 | 28 | 0 | 0 | 0.1 |
| STITH, WILLIAM J | 14 | 25 | 54 | 0 | 0.4 |
| STOVALL, BILLY JACK II | 12 | 0 | 0 | 0 | 0.1 |
| STUCKLE AND FERGUSON PLLC | 0 | 6 | 0 | 0 | 0.0 |
| SULLIVAN, JOHN MICHAEL | 30 | 4 | 0 | 0 | 0.2 |
| TAGGART, ALAN K | 3 | 19 | 0 | 0 | 0.1 |
| TATUM, JOHN | 4 | 0 | 0 | 1 | 0.1 |
| TAYLOR, EUGENE EDWARD III | 29 | 5 | 0 | 0 | 0.2 |
| THE RACHEL FIRM, PLLC | 0 | 16 | 0 | 0 | 0.0 |
| TIDWELL, JERRY | 0 | 36 | 0 | 0 | 0.1 |
| TINAJERO, KRISTEN O'BRIEN | 17 | 31 | 0 | 0 | 0.2 |
| TU, MARIA | 17 | 36 | 6 | 1 | 0.3 |
| TUCKER, ANGELA M., PC | 26 | 17 | 55 | 0 | 0.5 |
| TYLER, KRISTI | 0 | 0 | 46 | 0 | 0.2 |
| VAN DYKE, JASON LEE | 0 | 10 | 0 | 0 | 0.0 |
| VAUGHAN, CHERYL | 0 | 0 | 72 | 0 | 0.4 |
| VOYLES, BRADLEY | 27 | 20 | 0 | 0 | 0.2 |
| WADAS, DERK | 27 | 17 | 0 | 5 | 0.4 |
| WADDILL SKINNER LLP | 9 | 10 | 0 | 0 | 0.1 |
| WALKER, BARNETT | 37 | 9 | 0 | 0 | 0.3 |
| WALKER, KERRIE ELIZABETH | 6 | 5 | 0 | 0 | 0.1 |
| WHALEN, JAMES P | 27 | 19 | 10 | 2 | 0.4 |
| WILLIAMS, JACQUELINE B | 0 | 0 | 35 | 0 | 0.2 |
| WILLINGHAM, TAYLOR P | 0 | 22 | 0 | 0 | 0.1 |
| WILSON, WADE TYLER | 0 | 0 | 0 | 2 | 0.1 |
| ZENDEH DEL LAW FIRM, PLLC | 29 | 0 | 0 | 0 | 0.2 |

Appendix F - Miscellaneous Notes about Felony Case File Examination

Breakdown of Sample by Type of Counsel

| 138 Felony Cases Examined | Number from Sample | Percent of Sample |
|---------------------------|--------------------|-------------------|
| Appointed ⁴⁵ | 74 | 53.6% |
| Retained ⁴⁶ | 59 | 42.8% |
| Pro Se ⁴⁷ | 5 | 3.6% |

Dispositions by Type of Counsel⁴⁸

| 18 First Degree Felony Cases | | |
|--------------------------------------|---|--|
| 0 pro se cases | 7 appointed counsel cases | 11 retained cases |
| | 2 cases pending | 2 cases pending |
| | 1 case dismissed | |
| | | 2 cases def'd adjud. (1 for 4 year term; 1 for 10 year term) |
| | 4 cases pled to term of confinement (1 for 12 years; 2 for 15 years; 1 for 25 years) | 7 cases pled to term of confinement (1 for 8 years; 2 for 10 years; 4 for 15 years) |
| 27 Second Degree Felony Cases | | |
| 1 pro se case | 13 appointed counsel cases | 13 retained cases |
| 1 case pending | | 5 cases pending |
| | 1 case acquittal (non-jury trial) | |
| | 4 cases probation (1 for 4 year term; 3 for 10 year terms); 3 cases def'd adjud. (2 for 4 year terms; 1 for 8 year term) | 6 cases def'd adjud. (1 for 9 month term; 1 for 2 year term; 1 for 3 year term; 1 for 6 year term; 1 for 7 year term; 1 for 8 year term) |
| | 5 cases pled to term of confinement (1 for 3 year term; 1 for 7 year term; 3 for 10 year terms) | 2 cases pled to term of confinement (1 for 2 years; 1 for 4 years) |

⁴⁵ Five appointed cases later retained counsel.

⁴⁶ Two retained cases had counsel withdraw and were appointed counsel.

⁴⁷ Of the five pro se cases, four were still active at the time of review. The other case was dismissed.

⁴⁸ Type of counsel listed in this chart is the initial counsel type associated with the case.

| 31 Third Degree Felony Cases | | |
|---|--|--|
| 0 pro se cases | 19 appointed counsel cases | 12 retained cases |
| | | 1 case pending |
| | 2 cases dismissed | 2 cases dismissed |
| | 3 cases probation (1 for 4 year term; 1 for 5 year term; 1 for 10 year term); 5 cases def'd adjud. (1 for 2 year term; 1 for 3 year term; 2 for 5 year terms; 1 for 10 year term) | 3 cases probation (3 for 5 year terms); 5 cases def'd adjud. (1 for 2 year term; 2 for 3 year terms; 1 for 5 year term; 1 for 6 year term) |
| | 9 cases pled to term of confinement (1 for 9 month term; 4 for 2 year terms; 2 for 3 year terms; 1 for 7 year term; 1 for 10 year term) | 1 case pled to term of confinement (3 years) |
| 62 State Jail Felony Cases | | |
| 4 pro se cases | 35 appointed counsel cases | 23 retained cases |
| 3 cases pending | 2 cases pending | 2 cases pending |
| | 1 case acquittal (non-jury trial) | |
| 1 case dismissed | 2 cases dismissed | 1 case dismissed |
| | 2 cases probation (2 for 2 year terms); 12 cases def'd adjud. (7 for 2 year terms; 4 for 3 year terms; 1 for 4 year term) | 2 cases probation (1 for 2 year term; 1 for 4 year term); 11 cases def'd adjud. (1 for 1 year term; 3 for 2 year terms; 3 for 3 year terms; 2 for 4 year terms; 2 for 5 year terms) |
| | 16 cases pled to term of confinement (1 for 120 days; 7 for 180 days; 1 for 8 months; 3 for 9 months; 2 for 1 year; 2 for 7 years <I think that the 7 year terms were part of pleas for other offenses>) | 7 cases pled to term of confinement (5 for 180 days; 1 for 10 months; 1 for 18 months) |
| COMBINED FELONY DISPOSITION RATES (Removing pending cases from sample) | | |
| Pro Se Cases | Appointed Cases | Retained Cases |
| | Acquittal rate – 2.9% | Acquittal rate – 0% |
| N/A | Dismissal rate – 7.1% | Dismissal rate – 6.1% |
| N/A | Rate of Def'd Adjudication or Probationary Sentence – 41.4% | Rate of Def'd Adjudication or Probationary Sentence – 59.2% |
| N/A | Rate of Plea to Term of Confinement – 48.6% | Rate of Plea to Term of Confinement – 34.7% |

Appendix G - Miscellaneous Notes about Misdemeanor Case File Examination

Breakdown of Sample by Type of Counsel

| 125 Misdemeanor Cases Examined | Number from Sample | Percent of Sample |
|--------------------------------|--------------------|-------------------|
| Appointed | 50 | 40.0% |
| Retained ⁴⁹ | 57 | 45.6% |
| Pro Se ⁵⁰ | 18 | 14.4% |

Dispositions by Type of Counsel⁵¹

| 43 Class A Misdemeanor Cases | | |
|------------------------------|---|--|
| 0 pro se cases | 27 appointed counsel cases | 16 retained cases |
| | 4 cases pending | |
| | | 1 unclear disposition listed in my notes |
| | | 2 cases with class C plea |
| | 1 case acquittal (jury verdict) | |
| | 5 cases dismissed | 1 case dismissed |
| | 3 cases probation (1 for 1 year term; 1 for 18 month term; 1 for 2 year term); 2 cases def'd adjud. (1 for 1 year term; 1 for 15 month term) | 2 cases probation (1 for 15 month term; 1 for 2 year term); 6 cases def'd adjud. (2 for 1 year terms; 1 for 15 month term; 2 for 18 month terms; 1 for 2 year term) |
| | 12 cases pled to term of confinement (1 for 1 day; 1 for 4 days; 1 for 30 days; 1 for 40 days; 2 for 45 days; 1 for 60 days; 1 for 75 days; 2 for 100 days; 1 for 120 days; 1 for 150 days) | 4 cases pled to term of confinement (1 for 10 days; 1 for 60 days; 2 for 100 days) |

⁴⁹ One retained case had counsel withdraw and was later appointed counsel.

⁵⁰ Of the 18 pro se cases, six were still active at the time of review, and could be disposed with either retained or appointed counsel.

⁵¹ Type of counsel listed in this chart is the initial counsel type associated with the case.

| 82 Class B Misdemeanor Cases | | |
|--|--|---|
| 18 pro se cases | 23 appointed counsel cases | 41 retained cases |
| 6 cases pending | 1 case pending | |
| | 1 unclear disposition listed in my notes | |
| 3 cases with class C plea | | 2 cases with class C plea |
| 2 cases dismissed | 2 cases dismissed | 7 cases dismissed |
| 2 cases probation (1 for 1 year term; 1 for 15 month term); 4 cases def'd adjud. (1 for 6 month term; 2 for 9 month terms; 1 for 1 year term) | 2 cases probation (2 for 1 year terms); 4 cases def'd adjud. (3 for 9 month terms; 1 for 1 year term) | 21 cases probation (1 for 90 term; 2 for 9 month terms; 1 for 11 month term; 15 for 1 year terms; 2 for 18 month terms); 3 cases def'd adjud. (1 for 9 month term; 2 for 1 year terms) |
| 1 cases pled to term of confinement (45 days) | 13 cases pled to term of confinement (1 for 10 days; 1 for 12 days; 1 for 13 days; 2 for 15 days; 1 for 18 days; 1 for 20 days; 1 for 25 days; 2 for 30 days; 1 for 40 days; 1 for 55 days; 1 for 90 days) | 8 cases pled to term of confinement (3 for 4 days; 1 for 6 days; 1 for 7 days; 1 for 10 days; 2 for 30 days) |
| COMBINED MISDEMEANOR DISPOSITION RATES (Removing pending cases from sample) | | |
| Pro Se Cases | Appointed Cases | Retained Cases |
| Acquittal rate – 0% | Acquittal rate – 2.3% | Acquittal rate – 0% |
| Dismissal rate – 16.7% | Dismissal rate – 15.9% | Dismissal rate – 14.3% |
| Rate of Class C pleas – 25.0% | Rate of Class C pleas – 0% | Rate of Class C pleas – 7.1% |
| Rate of Def'd Adjudication or Probationary Sentence – 50.0% | Rate of Def'd Adjudication or Probationary Sentence – 25.0% | Rate of Def'd Adjudication or Probationary Sentence – 57.1% |
| Rate of Plea to Term of Confinement – 8.3% | Rate of Plea to Term of Confinement – 56.8% | Rate of Plea to Term of Confinement – 21.4% |